

**MEMORANDUM OF AGREEMENT**

**THIS MEMORANDUM OF AGREEMENT** (hereinafter the “MOA”) is made and entered into as of the \_\_\_\_ day of November, 2016, by and between the **DOWNTOWN LEXINGTON MANAGEMENT DISTRICT**, a Kentucky management district created pursuant to KRS 91.754, with its primary office located at 201 East Main Street, Lexington, Kentucky 40507 (hereinafter the “District”) and the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government of the Commonwealth of Kentucky pursuant to Chapter 67A of the Kentucky Revised Statutes, 200 East Main Street, Lexington, Kentucky 40507 (hereinafter “Lexington”).

**W I T N E S S E T H:**

**WHEREAS**, the District is committed to improving properties located within the jurisdiction of its boundaries; and

**WHEREAS**, Lexington has need of additional space for use as an area to store items related to disposing of solid waste; and

**WHEREAS**, the District and/or its contractual agencies or instrumentalities are willing to lease the necessary space and provide services related to the maintenance of such space.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants set forth herein, the receipt and sufficiency of which are acknowledged, the parties hereby agree as follows:

1. That the District will ensure that adequate space is available for use by Lexington as an area to store items related to the disposition of solid waste and as a continuation of a pilot project benefitting Lexington and properties located in the vicinity of the Old Courthouse and Cheapside Park. The location and minimum space required will be as determined by Lexington’s Division of Waste Management and is anticipated to be 1,000 square feet (the “Area”).

2. That the District will provide ancillary services related to the maintenance of the Area as further determined by the Division of Waste Management and the District.

3. That all improvements to the Area will be at the expense of Lexington unless otherwise agreed to by the parties.

4. That Lexington will reimburse the District for the actual cost of leasing the Area, with no additional markup by the District for any related services. It is anticipated that the cost will not exceed \$1200.00 per month for the term of this agreement. The term of this agreement shall be for two (2) years from the date written above.

5. That Lexington may terminate this agreement at any time for any reason by providing the District with at least sixty (60) days advance written notice, but will work with the District to ensure a fair and equitable treatment of any remaining costs related to such termination.

6. That in the event that Lexington determines the initial Area is no longer satisfactory the District will work with Lexington in good faith to locate another suitable area if requested.

7. That the District will continue to work with Lexington in locating other areas to provide similarly related services if requested.

8. The District shall perform (or ensure that) all duties and services included herein are performed faithfully and satisfactorily at the time, place and for the duration prescribed herein. The District shall keep itself fully informed of all national and state laws and all municipal ordinances and regulations in any manner affecting the work or performance of this MOA, and shall at all times observe and comply with such laws, ordinances and regulations, whether or not such laws, ordinances or regulations are mentioned herein, and shall indemnify Lexington, its officers, agents and employees against any claim or liability arising from and based on the District's violation of any such laws, ordinances or regulations.

9. Each party agrees that it shall be responsible for any claims or damages that are based upon its respective performance of this MOA, or that are based upon the actions or inactions of its respective employees or agents.

10. The District shall keep and make available to Lexington any records related to this MOA such as are necessary to support its performance of this MOA. Books of accounts shall be kept by the

District and entries shall be made therein of all money, goods, effects, debts, sales, purchases, receipts, payments and any other transactions of the District related to this MOA and shall be made available to Lexington upon request.

11. The District shall allow Lexington any necessary reasonable access to monitor its performance under this MOA.

12. In no event shall the parties be construed, held or become in any way for any purpose the employee of the other party, or partners, associates or joint ventures in the conduct of their respective endeavors or otherwise.

13. The District shall provide equal opportunity in employment for all qualified persons, shall prohibit discrimination in employment because of race, color, creed, national origin, sex, age, sexual orientation or gender identity, or handicap, shall promote equal employment through a positive, continuing program of equal employment, and shall cause any agency receiving funds provided pursuant to this MOA to do so. This program of equal employment opportunity shall apply to every aspect of its employment policies and practices.

14. Neither party may assign any of its rights and duties under this MOA without the prior written consent of the other party. Notwithstanding the foregoing, Lexington understands that the work or services hereunder may ultimately be performed by persons or entities other than the District.

15. This MOA does not create a contractual relationship with or right of action in favor of a third party against either the District or Lexington.

16. If any term or provision of this MOA shall be found to be illegal or unenforceable, this MOA shall remain in full force and such term or provision shall be deemed stricken.

17. This MOA shall be governed in all respects by the laws of the Commonwealth of Kentucky and venue for all actions shall lie in Fayette County, Kentucky.

18. By mutual agreement, the parties to this MOA may, from time to time, make written changes to any provision hereof. The District acknowledges that Lexington may make such changes only

upon approval of its legislative authority, the Lexington-Fayette Urban County Council, and the signature of its Mayor.

19. This MOA shall constitute the entire agreement between the parties and no representations, inducements, promises or agreements, oral or otherwise, which are not embodied herein shall be effective for any purpose. This MOA shall replace any previous agreement between the parties on the same subject matter.

20. The waiver by either party of any breach of any provision of this MOA shall not constitute a continuing waiver or waiver of any subsequent breach by either party of either the same or another provision of this MOA.

**IN WITNESS WHEREOF**, the parties certify that they have been duly authorized to execute, deliver and perform this Memorandum of Agreement, and have executed it as of the date first herein written.

**LEXINGTON-FAYETTE URBAN  
COUNTY GOVERNMENT**

BY: \_\_\_\_\_  
JIM GRAY, MAYOR

ATTEST:

\_\_\_\_\_  
URBAN COUNTY COUNCIL CLERK

**DOWNTOWN LEXINGTON MANAGEMENT  
DISTRICT**

BY:   
JAMES H. FRAZIER, III, CHAIRPERSON

COMMONWEALTH OF KENTUCKY )  
 )  
COUNTY OF FAYETTE )

The foregoing Memorandum of Agreement was subscribed, sworn to and acknowledged before me by James H. Frazier, III, as Chair of the Downtown Lexington Management District, on this the 3rd day of November, 2016.

My commission expires: 2/27/19

*Karen J. Moore*  
NOTARY PUBLIC, STATE AT LARGE, KY

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