

## ENGINEERING SERVICES AGREEMENT

**THIS IS AN AGREEMENT** made as of AUGUST 1, 2022, between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government of the Commonwealth of Kentucky pursuant to KRS Chapter 67A **LEXINGTON FAYETTE URBAN COUNT GOVERNMENT** and **STANTEC CONSULTING SERVICES INC.** with offices located at 3052 Beaumont Centre Circle, Lexington Kentucky 40513-1703 **LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT** intends to proceed with the continued implantation of the EPA approved Sanitary Sewer System Capacity Assurance Program as described in the attached **EXHIBIT A**, Scope of Engineering Services and Related Matters RFP #13-2022 (the "**PROJECT**"). The **CONSULTANT** shall perform professional engineering services and deliverables as described in **EXHIBIT A** which include customary master planning, civil, geotechnical, electrical, mechanical, structural, programming, water quality and sanitary engineering services as related to providing the deliverables specific to this agreement—that will assist the **OWNER** in successfully implementing the **PROJECT** and complying with any requirements which are related to the Consent Decree entered in a case styled *United States & Commonwealth of Kentucky v. Lexington Fayette Urban County Government*, United States District Court for the Eastern District of Kentucky, Civil Action No. 5:06-cv-386-KSF (the "**CONSENT DECREE**"). The services are hereinafter referred to as the **PROJECT**. The **primary goal of the PROJECT is to provide the OWNER with the technical support necessary to successfully meet the obligations and deadlines of the CONSENT DECREE.** **OWNER** and **CONSULTANT** in consideration of their mutual covenants herein agree in respect of the performance of professional engineering services by **CONSULTANT** and the payment for those services by **OWNER** as set forth below.

**CONSULTANT** shall provide professional consulting services for **OWNER** in all phases of the **PROJECT** to which this Agreement applies, serve as **OWNER'S** professional engineering representative for the **PROJECT** as set forth below and shall give professional consultation and advice to **OWNER** during the performance of services hereunder.

### SECTION 1 - BASIC SERVICES OF CONSULTANT

#### 1.1. General

**CONSULTANT** shall perform professional services as hereinafter stated that include customary civil, geotechnical, structural, mechanical, electrical and sanitary engineering services incidental thereto.

#### 1.2. Incorporated Documents

The following documents are incorporated by reference as part of this Agreement:

1. The **CONSENT DECREE**, as may be amended, including all appendices.
2. **EXHIBIT A** – Scope of Engineering Services and Related Matters RFP #13-2022 (Including Addendums).
3. **EXHIBIT B** – Certificate of Insurance and Evidence of Insurability.
4. **EXHIBIT C** – Proposal of Engineering Services and Related Matters (the **CONSULTANT'S** response to RFP #13-2022).
5. **EXHIBIT D** – Further Description of Basic Engineering Services and Related Matters.

To the extent of any conflict among the provisions of these documents and/or this Agreement, the provisions of this Agreement shall control, followed by the provisions of **EXHIBIT A**, then **EXHIBIT D**, and then **EXHIBIT C**.

### **1.3 Project Phase**

A complete description of the duties and responsibilities of the **CONSULTANT** are as indicated in **EXHIBIT A**, Scope of Engineering Services and Related Matters RFP #13-2022, **EXHIBIT C** Proposal of Engineering Services and Related Matters, and **Exhibit D** Further Description of Basic Engineering Services and Related Matters. After written authorization to proceed from the **OWNER**, **CONSULTANT** shall:

- 1.3.1.** Notify the **OWNER** in writing of its authorized representative who shall act as Project Engineer and liaison representative between the **CONSULTANT** and the **OWNER**. **OWNER** has the right to approve the Project Engineer, or any change thereto, which approval shall not be unreasonably withheld.
- 1.3.2.** The **CONSULTANT** **must perform all duties** necessary to fully complete the deliverables as further described in attached **EXHIBIT A**, Scope of Engineering Services and Related Matters RFP #13-2022, attached **EXHIBIT C**, Proposal of Engineering Services and Related Matters, and attached **EXHIBIT D** Further Description of Basic Engineering Services and Related Matters **unless otherwise agreed to in writing by the parties**.
- 1.3.3** The **CONSULTANT** shall provide written documentation of all meetings and be responsible for incorporating all comments and changes resulting therefrom in final work product.
- 1.3.4.** The **CONSULTANT** shall submit five (5) copies (hardcover) of all initial draft final work products for this **PROJECT** unless otherwise described in Exhibit A. The copies of the initial draft final reports are submitted for review and comment by the **OWNER**, and should be presented in person to the **OWNER**.
- 1.3.5.** After the **OWNER'S** detailed review, the **CONSULTANT** will revise the initial draft final for all work products for this **PROJECT**, and the **CONSULTANT** shall submit five (5) copies (hardcover) unless otherwise described in Exhibit A. One electronic copy of the all work products for this **PROJECT**, including all appendices, shall be provided and prepared in such a manner that it can readily be converted to a quick-link accessible form for the **OWNER'S** Website. The **OWNER** shall have ten (10) business days within which to accept or deny each such final draft. If it is denied, the **OWNER** shall provide a detailed explanation in writing for the basis of such denial. Once the **OWNER** accepts the draft as final, a total of ten (10) final copies (hardcover) are required in addition to an electronic copy unless otherwise described in Exhibit A.
- 1.3.6** Immediately notify **OWNER** of any delay in the delivery of a work product or deliverable, regardless of cause. Give written notice to **OWNER** within five (5) business days whenever **CONSULTANT** observes or otherwise becomes aware of any development that affects the scope or timing of **CONSULTANT'S** services, or any defect in the work of Contractor(s).

## **SECTION 2 - EXTRA WORK BY CONSULTANT**

- 2.1. The **OWNER** may desire to have the **CONSULTANT** perform work or render services in connection with this **PROJECT** other than provided by the expressed intent of this Agreement. Such work shall be considered as Extra Work, subject to a change order, supplemental to this Agreement, setting forth the character and scope thereof and the compensation therefore. Work under such change order shall not proceed until the **OWNER** gives written authorization. Should the **OWNER** find it desirable to have previously satisfactorily completed and accepted plans or parts thereof revised, the **CONSULTANT** shall make such revisions as directed, in writing, by the **OWNER**. This work shall be considered as Extra Work and shall be paid as such.
- 2.2. All Extra Work is subject to prior written authorization of **OWNER** and necessary appropriations made by the Urban County Council.

### **SECTION 3 - OWNER'S RESPONSIBILITIES**

#### **OWNER shall:**

- 3.1. Provide criteria and information as to **OWNER'S** requirements for the **PROJECT**, including design objectives and constraints, space, capacity and performance requirements, flexibility and expandability, and any budgetary limitations.
- 3.2. Assist **CONSULTANT** by placing at his disposal available information pertinent to the Project.
- 3.3. Examine all studies, reports, sketches, drawings, specifications, proposals and other documents presented by **CONSULTANT**, and provide written approval or disapproval thereof within a reasonable time so as not to delay the services of **CONSULTANT**.
- 3.4. Designate in writing a person to act as **OWNER'S** representative agent with respect to the services to be rendered under this Agreement (see Section 8.1.1.). Such person shall have complete authority to transmit instructions, receive information, interpret, and define **OWNER'S** policies and decisions with respect to materials, equipment, elements, and systems pertinent to **CONSULTANT'S** services.
- 3.5. Give written notice to **CONSULTANT** whenever **OWNER** observes or otherwise becomes aware of any development that affects the scope or timing of **CONSULTANT'S** services, or any defect in the work of **CONSULTANT**.
- 3.6. Furnish or direct **CONSULTANT** to provide, Extra Work as stipulated in Section Two (2) of this Agreement or other services as required.

### **SECTION 4 - PERIOD OF SERVICES**

- 4.1. Time is of the essence in the performance of this Agreement. **CONSULTANT** is aware that the **OWNER** is subject to penalties for non-compliance with the **CONSENT DECREE** deadlines. See attached **EXHIBIT A** for the overall current project schedule.
- 4.2. The provisions of this Section Four (4) and the various rates of compensation for **CONSULTANT'S** services provided for elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the **PROJECT** through completion.
- 4.3. If a delay results from the acts of **OWNER** or another entity that is required to permit or approve the work or services, an extension of time for such delay will be considered by **OWNER**.
  - 4.3.1. If the above type of delay occurs and **CONSULTANT** wants an extension of time, it must, within ten (10) days from the date of the delay, apply in writing to

- OWNER** for an extension of time for a reasonable period, which must be agreed upon by **OWNER**.
- 4.3.2. If the extension of time is approved by **OWNER**, the **PROJECT** schedule shall be revised to reflect the extension. Such extension of time to the completion date shall in no way be construed to operate as a waiver on the part of **OWNER** of any of its other rights in the Agreement.
- 4.3.3. If the above type of delay would prevent complete performance of the **PROJECT** within sixty (60) days of the time specified therein, **OWNER** shall have the option of cancelling the **PROJECT** or otherwise adjusting the scope of the services or work.
- 4.3.4. If the parties cannot mutually agree to an extension of time or an adjustment, Section 6.5 under “DISPUTES” of this Agreement shall apply.
- 4.4. If delays result solely by reason of acts of the **CONSULTANT**, the **CONSULTANT** shall be held liable for any financial penalties incurred by the **OWNER** as a result of the delay, **including but not limited to those assessed pursuant to the CONSENT DECREE**. Section 6.5 of this Agreement (**Disputes**), shall apply in the event the parties cannot mutually agree upon the cause(s) associated with delays in completing project deliverables. The **CONSULTANT** must immediately notify the **OWNER** in the event of such delay, and provide the **OWNER** a written action plan within five (5) business days on how it will attempt to resolve the delay.

## **SECTION 5 - PAYMENTS TO CONSULTANT**

### **5.1. Methods of Payment for Services of CONSULTANT.**

#### **5.1.1. For Basic Services**

**OWNER** shall issue individual task orders for each work assignment performed under this Agreement by **CONSULTANT** or its sub-consultant/s. Each task order shall contain scope of work, fee, and schedule for performance of the work. Individual task orders shall be of the form included in **EXHIBIT D**.

**5.1.1.a** Fee payable to **CONSULTANT** under individual task order shall be developed using hourly rates included in **EXHIBIT D** or as amended in accordance with provisions therein.

**5.1.1.b** Terms of payment to **CONSULTANT** shall be specified in each task order. For assignments with defined scope, lump sum task orders shall be issued. Otherwise, task orders shall include time and materials payment terms.

**5.1.1.c** Each task order issued shall receive prior written approval of **OWNER** prior to **CONSULTANT** proceeding with said work. The **OWNER**'s designated agent in Section 8.1.1. shall be the only person authorized to provide such approval.

#### **5.1.2. For Extra Work**

Extra Work shall be paid for by the **OWNER** on the basis of a fixed fee, the amount of which shall be determined by negotiation. The **OWNER** shall have the right to negotiate alternate methods of payment for Extra Work if the **OWNER**

determines that the fixed fee basis is not feasible. In the event the **OWNER** and the **CONSULTANT** are unable to agree upon the amount of payment for Extra Work, then the amount of such payment shall be determined pursuant to Section 6.5 (**Disputes**).

**5.2. Times of Payment**

**5.2.1** **CONSULTANT** shall submit to **OWNER** detailed monthly statements for Basic Services and Extra Work rendered. The Statements will be based upon **CONSULTANT'S** estimate of the proportion of the total services actually completed at the time of billing. **OWNER** shall respond to **CONSULTANT'S** monthly statements within thirty (30) days, either denying payment or making payment.

**5.3. Other Provisions Concerning Payments**

**5.3.1.** In the event the Agreement is terminated by the **OWNER** without fault on the part of the **CONSULTANT**, the **CONSULTANT** shall be paid for the work performed or services rendered for which it has not already been paid in an amount bearing the same ratio to the total Agreement fee as the amount of work completed or partially completed and delivered to the **OWNER** is to the total amount of work provided for herein, as determined by mutual agreement between the **OWNER** and the **CONSULTANT**.

**5.3.2.** In the event the services of the **CONSULTANT** are terminated by the **OWNER** for fault on the part of the **CONSULTANT**, the **CONSULTANT** shall be paid reasonable value of the work performed or services rendered and delivered for which it has not already been paid, and the amount to be paid shall be determined by the **OWNER**.

**SECTION 6 - GENERAL CONSIDERATIONS**

**6.1. Termination**

**6.1.1.** **CONSULTANT** may only terminate this Agreement due to **OWNER'S** material breach of the terms hereof which breach causes **CONSULTANT** to be unable to perform its duties and responsibilities under this Agreement and upon forty-five (45) days written advance notice to **OWNER**.

**6.1.2.** The **OWNER** may terminate this Agreement for cause upon seven (7) business days written advance notice to the **CONSULTANT**. The **OWNER** reserves the right to terminate the Agreement for any reason whatsoever, with or without cause, at any time upon thirty (30) days written advance notice to the **CONSULTANT**.

**6.2. Ownership and Reuse of Documents**

All documents, including raw data, reports, drawings and specifications, prepared by the **CONSULTANT** pursuant to this Agreement shall be delivered to and become the property of the

**OWNER.** The **OWNER** shall have the right to reuse same without restriction or limitation, but without liability or legal exposure to **CONSULTANT**.

**6.3. Legal Responsibilities and Legal Relations**

**6.3.1.** The **CONSULTANT** shall familiarize itself with and shall at all times comply with the **CONSENT DECREE** and all federal, state, and local laws, ordinances, and regulations that in any manner affect the services of this Agreement.

**6.3.2.** In performing the services hereunder, the **CONSULTANT** and its consultants, employees, agents and representatives shall not be deemed or construed to be employees of **OWNER** in any manner whatsoever. Except as otherwise provided in this Agreement, the **CONSULTANT** shall be acting as an independent contractor. The **CONSULTANT** shall not hold itself out as, nor claim to be, an officer or employee of **OWNER** by reason hereof and shall not make any claim, demand or application to or for any right or privilege applicable to an officer or employee of **OWNER**. The **CONSULTANT** shall be solely responsible for any claims for wages or compensation by **CONSULTANT'S** employees, agents and representatives, including consultants, and shall save and hold **OWNER** harmless therefrom.

**6.3.3.** The parties hereto agree that causes of actions between the parties shall be governed by applicable provisions of the Kentucky Revised Statutes, and that venue of any legal action shall be a court of appropriate jurisdiction in Fayette County, Kentucky. The parties further agree that Kentucky law shall apply with respect to the interpretation of any provision of this Agreement.

**6.4. Successors and Assigns**

**6.4.1.** **CONSULTANT** binds itself and its partners, successors, assigns and legal representatives to this Agreement. **CONSULTANT** shall not assign any interest in this Agreement without prior written consent of **OWNER**. **OWNER'S** consent shall not relieve the **CONSULTANT** of any responsibility for compliance with the provisions of this Agreement.

**6.4.2.** **In no event shall** the **CONSULTANT** subcontract more than fifty percent (50%) of the work, based upon dollar value of the work.

**6.4.3.** Nothing herein shall be construed to give any rights or benefits hereunder to anyone other than **OWNER** and **CONSULTANT**.

**6.5. Disputes**

Except as otherwise provided in this Agreement, any dispute hereunder may be resolved by agreement of the **OWNER'S** Agent (Section 8.1.1) and the **CONSULTANT**. In the absence of such an agreement, the dispute shall be submitted to the **OWNER'S** Commissioner, Department of Environmental Quality, whose decision shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, or so grossly erroneous as necessarily to imply bad faith. Pending a final decision of a dispute hereunder, the **CONSULTANT** shall proceed diligently with the performance of the Agreement in accordance with the directions of the **OWNER**.

**6.6. Accuracy of Consultant's Work**

**CONSULTANT** shall be required to perform this Agreement in accordance with the degree of ordinary and reasonable skill and care usually exercised by professional engineers prevailing at the time, place and under similar conditions as the services hereunder are rendered. **CONSULTANT** shall be responsible for the accuracy of all work, even though raw data, reports, Drawings and Specifications have been accepted by **OWNER**, and it shall make any necessary revisions or corrections resulting from its errors and/or omissions for no additional compensation. By submission of reports, soils and subsurface information, quantities estimates, calculations and Drawings and Specifications to **OWNER**, **CONSULTANT** has made an incontrovertible representation that the information is accurate within the appropriate standard of skill and care. Failure on the part of **CONSULTANT** to provide the expected level of accuracy may be grounds for **OWNER** to terminate this Agreement

**6.7. Security Clause**

The **CONSULTANT** certifies that he shall not at any time release or divulge any information concerning the services covered by this Agreement to any person or any public or private organization without prior approval of the **OWNER** unless otherwise required by law

**6.8. Access to Records**

The **CONSULTANT** and its sub-consultants shall maintain all books, documents, papers, and accounting records, and make such materials available at their respective offices at all reasonable times during the Agreement period and for three (3) years from the date of final payment under the Agreement for inspection by the **OWNER**, and copies thereof shall be furnished if requested. Failure to maintain such records for three (3) years after the date of final payment may be grounds for the **OWNER** to disqualify the **CONSULTANT** from consideration for future consultant engineering Agreements.

**6.9. Risk Management Provisions, Insurance and Indemnification**

**6.9.1. DEFINITIONS**

The **CONSULTANT** understands and agrees that the Risk Management Provisions of this Agreement define the responsibilities of the **CONSULTANT** to the **OWNER**.

As used in these Risk Management Provisions, the terms “**CONSULTANT**” and “**OWNER**” shall be defined as follows:

- a. **CONSULTANT** means the consultant and its employees, agents, servants, owners, principals, licensees, assigns and subcontractors of any tier.
- b. **OWNER** means the Lexington-Fayette Urban County Government and its elected and appointed officials, employees, agents, boards, assigns, volunteers, and successors in interest.

**6.9.2. INDEMNIFICATION AND HOLD HARMLESS PROVISION**

- a. It is understood and agreed by the parties that **CONSULTANT** hereby assumes the entire responsibility and liability for any and all damages to persons or property caused by or resulting from or arising out of any act or omission on the part of **CONSULTANT** or its employees, agents, servants, owners, principals, licensees, assigns or subcontractors of any tier (hereinafter "**CONSULTANT**") under or in connection with this agreement and/or the provision of goods or services and the performance or failure to perform any work required thereby.
- b. **CONSULTANT** shall indemnify, save, hold harmless and defend the Lexington-Fayette Urban County Government and its elected and appointed officials, employees, agents, volunteers, and successors in interest (hereinafter "**OWNER**") from and against all liability, damages, and losses, including but not limited to, demands, claims, obligations, causes of action, judgments, penalties, fines, liens, costs, expenses, interest, defense costs and reasonable attorney's fees that are in any way incidental to or connected with, or that arise or are alleged to have arisen, directly or indirectly, from or by **CONSULTANT**'s performance or breach of the agreement and/or the provision of goods or services provided that: (a) it is attributable to personal injury, bodily injury, sickness, or death, or to injury to or destruction of property (including the loss of use resulting therefrom), or to or from the negligent acts, errors or omissions or willful misconduct of the **CONSULTANT**; and (b) not caused solely by the active negligence or willful misconduct of **OWNER**.
- c. Notwithstanding, the foregoing, with respect to any professional services performed by **CONSULTANT** hereunder (and to the fullest extent permitted by law), **CONSULTANT** shall indemnify, save, hold harmless and defend **OWNER** from and against any and all liability, damages and losses, including but not limited to, demands, claims, obligations, causes of action, judgments, penalties, fines, liens, costs, expenses, interest, defense costs and reasonable attorney's fees, for any damage due to death or injury to any person or injury to any property (including the loss of use resulting therefrom) to the extent arising out of, pertaining to or relating to the negligence, recklessness or willful misconduct of **CONSULTANT** in the performance of this agreement.
- d. In the event **OWNER** is alleged to be liable based upon the above, **CONSULTANT** shall defend such allegations and shall bear all costs, fees and expenses of such defense, including but not limited to, all reasonable attorneys' fees and expenses, court costs, and expert witness fees and expenses, using attorneys approved in writing by **OWNER**, which approval shall not be unreasonably withheld.
- e. These provisions shall in no way be limited by any financial responsibility or insurance requirements, and shall survive the termination of this agreement.
- f. **OWNER** is a political subdivision of the Commonwealth of Kentucky. **CONSULTANT** acknowledges and agrees that **OWNER** is unable to provide indemnity or otherwise save, hold harmless, or defend the **CONSULTANT** in any manner.



**6.9.3. DAMAGES RELATED TO NONPERFORMANCE OR DELAY BY CONSULTANT**

In the event that **CONSULTANT'S** delay or other nonperformance of its obligations hereunder results in the imposition of penalties against the **OWNER** pursuant to the **CONSENT DECREE**, or the **OWNER** otherwise suffers damage as a result of such delay or nonperformance, **CONSULTANT** shall be solely liable to **OWNER** for any and all such damages, including any costs and attorney's fees.

**6.9.4. FINANCIAL RESPONSIBILITY**

The **CONSULTANT** understands and agrees that the **CONSULTANT** shall, prior to final acceptance of the **CONSULTANT'S** proposal and the commencement of any work; demonstrate the ability to assure compliance with the Indemnity Agreement and other provisions of this Agreement.

**6.9.5. INSURANCE REQUIREMENTS**

**6.9.5.1. Required Insurance Coverage**

**CONSULTANT** shall procure and maintain for the duration of this Agreement the following or equivalent insurance policies at no less than the limits shown below and cause its subcontractors to maintain similar insurance with limits acceptable to **OWNER** in order to protect **OWNER** against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by **CONSULTANT**. The cost of such insurance shall be included in any proposal:

<u>Coverage</u>	<u>Limits</u>
General Liability (Insurance Services Office Form CG 00 01)	\$1 million per occurrence, \$2 million aggregate or \$2 million combined single limit
Commercial Automobile Liability (Insurance Services Office Form CA 0001)	combined single, \$1 million per occurrence
Professional Liability	\$1 million per occurrence, \$ 2 million aggregate
Worker's Compensation	Statutory
Employer's Liability	\$500,000.00

The policies above shall contain the following conditions:

- a. **OWNER** shall be named as an additional insured in the General Liability Policy and Commercial Automobile Liability Policy.
- b. The General Liability Policy shall be primary to any insurance or self-insurance retained by **OWNER**.
- c. The General Liability Policy shall include Business Interruption coverage.
- d. The Contractor shall carry Builders Risk coverage at a level sufficient to cover the replacement cost of any equipment or machinery used at the work site, if applicable.
- e. The General Liability Policy shall include a Pollution Liability endorsement and/or Environmental Casualty coverage unless it is deemed not to apply by **OWNER**.
- f. The General Liability Policy shall have a Professional Liability endorsement (including Errors and Omissions), which shall include Business interruption coverage and this policy or endorsement shall include Environmental Casualty coverage for any services performed pursuant to the contract, and/or a separate Professional Liability Policy shall be obtained unless it is deemed not to apply by **OWNER**. (**OWNER** does not need to be named as additional insured).
- g. **OWNER** shall be provided at least 30 days advance written notice via certified mail, return receipt requested, in the event any of the required policies are canceled or non-renewed.
- h. The Professional Liability policy shall be maintained for a minimum of three years beyond the completion date of the project, to the extent commercially available. If not commercially available, **CONSULTANT** shall notify **OWNER** and obtain similar insurance that is commercially available and acceptable to **OWNER**.
- i. Said coverage shall be written by insurers acceptable to **OWNER** and shall be in a form acceptable to **OWNER**. Insurance placed with insurers with a rating classification of no less than Excellent (A or A-) and a financial size category of no less than VIII, as defined by the most current Best's Key Rating Guide shall be deemed automatically acceptable.

#### **6.9.5.2. Renewals**

After insurance has been approved by **OWNER**, evidence of renewal of an expiring policy must be submitted to **OWNER**, and may be submitted on a manually signed renewal endorsement form. If the policy or carrier has changed, however, new evidence of coverage must be submitted in accordance with these Insurance Requirements.

#### **6.9.5.3. Right to Review, Audit and Inspect**

**CONSULTANT** understands and agrees that **OWNER** may review, audit and inspect any and all of **CONSULTANT'S** records and operations to insure compliance with these Insurance Requirements.

#### **6.9.6. SAFETY AND LOSS CONTROL**

**CONSULTANT** shall comply with all applicable federal, state, and local safety standards related to the performance of its works or services under this Agreement and take necessary action to protect the life, health and safety and property of all of its personnel on the job site, the public, and **OWNER**.

#### **6.9.7. DEFINITION OF DEFAULT**

**CONSULTANT** understands and agrees that the failure to comply with any of these insurance, safety, or loss control provisions shall constitute default under this Agreement. **CONSULTANT** also agrees that **OWNER** may elect as its option any single remedy or penalty or any combination of remedies and penalties, as available, including but not limited to purchasing insurance and charging **CONSULTANT** for any such insurance premiums purchased, or suspending or terminating this Agreement.

### **SECTION 7 - EQUAL EMPLOYMENT OPPORTUNITY**

During the performance of this Agreement, the **CONSULTANT** agrees as follows:

- 7.1. The **CONSULTANT** will not discriminate against any employee or application for employment because of race, color, religion, national origin, sex, age, or handicap. The **CONSULTANT** will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, national origin, sex, age, or handicap. Such action shall include, but not be limited to the following: employment upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. The **CONSULTANT** agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this non-discrimination clause.
- 7.2. The **CONSULTANT** will, in all solicitations or advertisements for employees placed by or on behalf of the **CONSULTANT**, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, sex, age (between forty and seventy), or handicap.

### **SECTION 8 - SPECIAL PROVISIONS, EXHIBITS, AND SCHEDULES**

- 8.1. This Agreement is subject to the following provisions.

**8.1.1.** Pursuant to subparagraph 3.4 of this Agreement, **OWNER** has assigned Charles H. Martin, P.E., Director of the Division of Water Quality (the "**OWNER'S** Agent"), as the authorized agent of **OWNER**, to monitor, direct and review the performance of work of the **CONSULTANT**. Documents, data, reports, and all matters associated with carrying out this Agreement shall be addressed to the

**OWNER'S** Agent or his designee. Questions by the **CONSULTANT** regarding interpretations of the terms, provisions and requirements under this Agreement shall be addressed to the **OWNER'S** Agent or his designee. The **CONSULTANT** shall look only to the **OWNER'S** Agent or his designee for direction in its performance under this Agreement; no other direction shall be binding upon **OWNER**. **OWNER** shall respond to written requests by **CONSULTANT** within thirty (30) days.

- 8.2.** This Agreement, together with the Incorporated Documents (Section 1.2) constitutes the entire Agreement between **OWNER** and **CONSULTANT** and supersedes all prior written or oral understandings. This Agreement and **EXHIBITS A, B, C and D** and any related schedules or documents may only be amended, supplemented, modified or canceled by a duly executed written instrument.
- 8.3. NO THIRD PARTY RIGHTS.** This agreement does not create a contractual relationship with or right of action in favor of a third party against either **OWNER** or **CONSULTANT**.
- 8.4 UNENFORCEABLE TERMS/SURVIVABILITY.** If any term or provision of this Agreement shall be found to be illegal or unenforceable, this Agreement shall remain in full force and such term or provision shall be deemed stricken. The provisions of Section 6 of this Agreement shall survive its termination.
- 8.5. NON-WAIVER.** The failure of either party to enforce any right reserved to it in this Agreement shall not be a waiver of any such right to which the party is entitled.

**IN WITNESS WHEREOF**, the parties hereto have made and executed this Agreement as of the day and year first above written.

**OWNER:**  
**LEXINGTON-FAYETTE URBAN**  
**COUNTY GOVERNMENT**

**CONSULTANT:**

BY: *Linda Gorton*  
LINDA GORTON, MAYOR

*[Signature]*  
BY: SMITZER CONSULTING  
SERVICES, INC.

ATTEST:  
*Markeye Stock*  
URBAN COUNTY COUNCIL CLERK

COMMONWEALTH OF KENTUCKY    )  
  )  
COUNTY OF FAYETTE                    )

The foregoing Agreement was subscribed, sworn to and acknowledged before me by Joe G. Herman, as the duly authorized representative for and on behalf of Stantec Consulting Services Inc. on this the 17<sup>th</sup> day of June, 2022.

My commission expires: August 25, 2022.

Rita W Sartori 607362  
NOTARY PUBLIC



# **EXHIBIT A**

## **Scope of Engineering**

### **Services and Related Matters**

#### **RFP #13-2022**

##### **SANITARY SEWER SYSTEM CAPACITY ASSURANCE PROGRAM**

###### **Scope of Engineering Services**

The Lexington-Fayette Urban County Government (LFUCG), Division of Water Quality (DWQ) is accepting proposals from interested consulting engineering firms for the continued implementation of its EPA approved sanitary sewer System Capacity Assurance Program (SCAP). This scope includes the management and administration of all SCAP activities as directed by LFUCG's System Capacity Assurance Program (SCAP) Manger including:

- Maintenance of a public facing SCAP database that provides a transparent accounting of available sanitary sewer capacity within the service area;
- Management and calibration of the current hydraulic model (Mike Urban) resulting from:
  - Sewer capacity withdrawals assigned to new service connections
  - Sewer capacity inputs from a wide variety of system upgrade projects
  - Data collection and analysis of ongoing, annual flow monitoring; and
- Other Capacity, Management, Operations and Maintenance (CMOM) tasks as directed by the SCAP Manager.

This scope is intended to generally describe the services required for continued implementation of the SCAP. Proposers are strongly urged to consult the revised SCAP (dated March 2014) and Consent Decree (as entered on January 3, 2011) for appropriate details—these documents are available on the LFUCG webpage: <https://www.lexingtonky.gov/consent-decree>.

In cases where there is no definition of term or phrase provided by this scope, a definition contained in the Consent Decree prevails first, followed by the approved SCAP.

The approved SCAP has been implemented in accordance with the schedules set forth in the approved plan. Two key elements of the implementation are:

1. The development and use of the public access SCAP database (CTIMS) that provides a transparent accounting of available sanitary sewer capacity; and
2. The interface of the public facing SCAP database with LFUCG's asset management software (ACCELA).

While LFUCG maintains a staff dedicated to provide day to day administration of the SCAP, LFUCG wishes to continue use of externally provided project management services, authorized under separate tasks orders to:

1. Provide general project management services for the continued implementation of all aspects of the approved SCAP.
2. Provide administrative and technical support to the LFUCG SCAP staff, (E.g. independent technical review of SCAP requests, update the hydraulic model, and interface with ACCELA to calculate credits earned).
3. Maintain appropriate ledgers including the Sewer Capacity Wait List.
4. Other CMOM program requirements as approved by the SCAP Manager and the Director, Division of Water Quality.

#### **Term**

The SCAP Engineering Services Agreement will be for one (1) year in duration, with up to four mutually agreeable annual renewals, subject to the specific terms and conditions of the contract documents.

#### **General Project Background**

Since March 2008, the Lexington Fayette Urban County Government (LFUCG), Division of Water Quality has been implementing required provisions of its federal Consent Decree. Provisions implemented to date include:

- Development / regulatory submission of various work plans including a Sanitary Sewer System Assessment (SSSA) Work Plan, a Sanitary Sewer System Capacity Assessment Work Plan, a Hydraulic Model Report and System Capacity Assurance Program.
- Sewer System Assessment (SSA) reports for Groups 1, 2, and 3, as defined by the Consent Decree.
- Remedial Measures Plan (RMP) for Group 1, 2, and 3, as defined by the Consent Decree.
- All CMOM specific report plans.
- List of Authorized Connections (Paragraph 16.B.viii of the Consent Decree).

Section VII, Paragraphs 15 & 16 of the Consent Decree are most relative to this scope of services because they:

1. Define the required scope for the SCAP - Consent Decree Paragraph 16.B
2. Define the hydraulic model requirements - Consent Decree Paragraph 15.E: Hydraulic Model Report
3. Define the parameters for flow monitoring and data collection necessary to complete calibration of the hydraulic model - Consent Decree Paragraph 15.D: Capacity Assessment Work Plan

All prospective proposers should have a complete understanding of the intent and requirements the Hydraulic Model Report, the System Capacity Assurance Program along with the SCAP requirements of Consent Decree Paragraph 16.B in order to meet the obligations associated with this scope of services. The Hydraulic Model Report, the System Capacity Assurance Program and the Consent Decree can be

obtained by accessing LFUCG's webpage at [Public document repository | City of Lexington \(lexingtonky.gov\)](https://www.lexingtonky.gov/public-document-repository).

### Scope of Services

- A. The successful Proposer (System Capacity Assurance Program Consultant) will be required to assist DWQ in ongoing maintenance and oversight of the approved System Capacity Assurance Program in accordance with the Consent Decree.
- B. During the duration of this contract, LFUCG may pursue modifications to the current SCAP enabling ordinances. To accomplish this task, LFUCG would form a Task Force consisting of interested parties (city officials, business leaders and neighborhood leaders) to provide perspective and input in developing the content of any ordinance changes. **This effort would be limited to ordinance or policy changes that do not impact the EPA approval status of the SCAP.** The Capacity Assurance Program Consultant may be required to lead the Task Force by:
- Educating Task Force members with respect to the Consent Decree required components of the SCAP.
  - Providing technical guidance, functional direction and clerical support during monthly progress meetings.
  - As approved by the LFUCG SCAP Manager, completing all research necessary to establish benchmarks for LFUCG's SCAP in comparison with other cities already operating under a similar EPA enforced SCAP.
  - Incorporating Task Force recommendations for the overall improvement of LFUCG's current and proposed sanitary sewer extension, tap-on permit issuance ordinances, policies, procedures or processes, provided that those recommendations are not in conflict with any prior commitments made in the EPA approved SCAP.
- Organizations expected to participate in the Task Force are identified in Related Matters Item A of this scope.
- C. The SCAP Consultant will be required to utilize the existing Mike Urban sanitary sewer system hydraulic modeling software for all sanitary sewer system analysis. Updates to the model will be made by accessing the ACCELA (Asset Management System) program. Data contained within ACCELA is required to calculate capacity credits and allocations.
- D. LFUCG currently has the following systems to accurately track system capacity credits. Capacity credits are from a wide variety of sources including:
- i. ACCELA- Sewer Line Maintenance/I&I (pipeline repairs, manhole repairs, manhole lid replacements, infiltration pan installations, etc.)
  - ii. ACCELA/On Base - Capital Construction Program (pump station upgrades, pipeline replacements, storage facility construction, etc.)
  - iii. ACCELA- Private Property Program (sump pump redirections, private lateral repairs, cleanout cap replacement, downspout disconnects, etc.)
  - iv. Capacity Tracking and Inventory Management System (CTIMS) a custom software application utilized by DWQ to manage the sewer capacity inventory.



- v. Sewer Tap-on Desk (sewer plug permits for demolitions)
- vi. Division of Engineering/Division of Water Quality- (sanitary sewer replacements or other capital improvement projects related to the sanitary sewer systems)
- vii. Division of Building Inspection - (remodels and/or retrofits that effectively increase or decrease sanitary sewer capacity demand)

As noted above, CTIMS is a customized software application that captures all of the capacity credits and the allocation of credits requested by the development community. The SCAP Consultant will be required to maintain this program including the public access portion.

- E. The SCAP Consultant will be responsible for directing the future procurement and/or implementation of all services necessary to accurately implement the approved SCAP and recalibrate the model as necessary, including 3<sup>rd</sup> party field level flow monitor installation and maintenance. This procurement and/or implementation service is a component of this contract and will be authorized by separate, unique task orders.
- F. For the duration of the approved contract, the SCAP Consultant will be responsible for all aspects of the CAP implementation, including hydraulic model recalibrations, capacity credit validation, capacity allocation tracking, connection approvals / certifications and reports as required by the approved SCAP. Potential proposers to this scope of services are strongly encouraged to review the details of related documents posted on the LFUCG web site.
- G. The SCAP Consultant will be required to provide assistance in quarterly and annual reporting to the EPA. Items for reporting include: CMOM program updates, SSO tracking, Pump Station overflows, WWTP bypasses, and basement backups. Previous Quarterly and Annual reports may be referenced at [https://drive.google.com/drive/folders/10iQZB4nKp0TY3EWRq85TAfyggYII9k\\_W](https://drive.google.com/drive/folders/10iQZB4nKp0TY3EWRq85TAfyggYII9k_W)

### **Related Matters**

- A. Any and all other technical requirements for this Scope of Services can be found in Paragraph 16 of the Consent Decree, and the approved System Capacity Assurance Program. In addition to the technical requirement, multiple partners may be affected by the continued implementation of the SCAP. The future success of the program may depend on involvement of a future Task Force that includes representatives from the following list:
  - Lexington Homebuilders Association
  - Commerce Lexington
  - Fayette County Neighborhood Council
  - Fayette Alliance
  - LFUCG Administration / Economic Development / LFUCG Urban County Council
  - LFUCG Planning Commission / LFUCG Planning
  - LFUCG Building Inspection
  - LFUCG Engineering -New Development
  - LFUCG Division of Water Quality

This list is not intended to be all inclusive. The final makeup of any future Task Force would be at the discretion of the Urban County Mayor and Council. **NOTE: THE FORMATION OF A TASK FORCE DURING THE COURSE OF THIS CONTRACT IS NOT A CERTAINTY; THE INFORMATION IS PROVIDED FOR INFORMATIONAL PURPOSES ONLY.**

- B. In addition to the Task Force meeting described above, the SCAP Consultant shall prepare, administer and attend project progress meetings with the SCAP Manager and his designees.

**Summary of Deliverables**

The following is a list of typical, frequent deliverables expected under this Scope of Services. The list is intended solely as a guide and may not be an all-inclusive list of deliverables associated with this Scope of Services.

- A. Technical review and recommendation for all Sanitary Sewer Capacity Requests.
- B. Technical Memorandum on the yearly Hydraulic Model updates.
- C. Submission of all SCAP summary data for inclusion in LFUCG’s quarterly and annual reports to EPA.
- D. Technical letters to summarize the conclusions for any hydraulic model evaluation requests submitted by LFUCG’s Remedial Measures Program team.
- E. Development of a Scope of Services for all Flow Monitoring work where the data will be used to recalibrate the Hydraulic Model.
- F. Preparation of meeting agendas and notes for monthly progress meetings.

**Fee Estimate Format**

Proposal fee estimates should be provided using TABLE 1 **ESTIMATED FEE SCHEDULE – BASIC SCAP SCOPE DELIVERABLES** table provided. For the purposes of contract award, the lump sum fee total provided in the table will be the pricing component used in the overall evaluation and scoring of proposals.

Table 2 – Key SCAP Team Members must be completed in response to this Scope of Services. This information will not be utilized in evaluating contract award but will be utilized in the event of award; as a basis for developing and approving future Task Orders.

**Selection Criteria**

Firms will be individually ranked for each category included in their proposal. The following criteria will be used by the evaluation committee to rank prospective firms:

Overall expertise of the firm in service category	20 points
Overall expertise of the Team members in service category	20 points
Past performance in the service category	20 points
Project Manager Qualifications	15 points
Risk Management Plan	5 points
Degree of Local Employment	10 points
Hourly Rates	<u>10 points</u>

**Schedule and Completion**

The proposed timeline for this project is outlined in the following schedule. This timeline may be adjusted. The Division of Water Quality shall arrange the exact time and location of meetings.

Proposals Due to Purchasing: April 22<sup>th</sup>, 2022

Meeting to Negotiate Contract: May 2, 2022

LFUCG Approval of Contract: June 1, 2022

Notice to Proceed: July 1, 2022

**Method of Invoice and Payment**

The Consultant may submit monthly invoices for basic services or work rendered, based upon the Consultant's estimate of the portion of the total services actually completed during the billing cycle. Each invoice shall be accompanied by a breakdown of hours attributed to each Task for both the billing cycle and the cumulative project period. The SCAP Manager shall respond to the invoice within thirty days, either denying or approving payment. Specific project time sheets and other payroll information may be subject to reviews and audits by the Lexington-Fayette Urban County Government.

**Miscellaneous**

- A. All plans, specifications and accompanying documents associated with this Scope of Services are subject to review by the Lexington-Fayette Urban County Government's Division of Water Quality. The SCAP Consultant shall be responsible for ensuring that all documents prepared by the SCAP Consultant are transferred to the Division of Water Quality.
- B. Any data collection or data transfers associated with this project shall be compatible with existing Geographic Information System parameters used by the Urban County Government. Access Data Base formats will be provided.
- C. All data files associated with hydraulic analysis software shall be easily and readily edited and documented and configured to operate with Arc Info and ArcView GIS.
- D. All material, policies, plans, computer models, reports and other data shall become the property of LFUCG and shall be for its exclusive use only. The SCAP consultant may retain copies of the work products listed above but shall not use, provide or share such work products in any way or with any other clients without the express, written consent of LFUCG's Commissioner of Environmental Quality and Public Works.

**TABLE 1: ESTIMATED FEE SCHEDULE – BASIC SCAP SCOPE DELIVERABLES**

Task	Estimated Total Annual Hours for Task	Estimated Total Annual Fee
Overall SCAP project management.		
Public facing SCAP software development and maintenance.		
Complete review / issue recommendations for capacity requests (assume 400 per year).		
Preparation and submission of four (4) Quarterly Reports and one (1) Annual Report to LFUCG.		
Draft procurement documents, including site maps, for annual flow monitoring (assume 30 sites).		
Complete analysis of flow data collected at the 30 sites (assume 120 day data collection period) and recalibrate model with synthesized data (assume all data is collected for a single watershed).		
Complete review / issue recommendations for model compliance of capital improvement projects designed as part of the annual CIP (assume 50 per year).		
Conduct and document monthly project progress meetings with LFUCG SCAP staff.		
<b>TOTALS</b>		

**TABLE 2: KEY SCAP TEAM MEMBERS**

Title	Hourly Rate


**Exhibit B**  
**Certificate of Insurance**  
**And**  
**Evidence of Insurability**

**Exhibit C**

**Example Task Order**

**LFUCG TASK ORDER NO. \_\_\_\_\_**  
**UNDER LFUCG AGREEMENT WITH \_\_\_\_\_ FOR \_\_\_\_\_ CAPACITY**  
**ASSURANCE PROGRAM (CAP) CONSULTANT**

**CONSULTANT**

**OWNER**

<b>Name</b>		Lexington Fayette Urban County Government
<b>Street Address</b>		125 Lisle Industrial Avenue, Suite 180
<b>City, State, Zip</b>		Lexington, KY 40511
<b>Contact Person</b>		Charles Martin, PE
<b>Telephone</b>		859-425-2455
<b>Fax</b>		859-254-7787
<b>E-Mail</b>		chmartin@lexingtonky.gov

**Task Order Date:** \_\_\_\_\_

**Task Name:** \_\_\_\_\_

**Task ID:** \_\_\_\_\_

**SCOPE OF WORK/DELIVERABLES**

**SCHEDULE OF WORK**

Work under this Task Order to be completed by August 1, 2022.

**FEE**

**ADDITIONAL PROVISIONS**

Because this is a Commonwealth Environmental Project, **CONSULTANT** understands and agrees that the performance of these services is related to the Consent Decree entered in a case styled *United States & Commonwealth of Kentucky v. Lexington Fayette Urban County Government*, United States District Court for the Eastern District of Kentucky, Civil Action No. 5:06-cv-386-KSF (the "**CONSENT DECREE**"), a copy of which has been made available for review by the **CONSULTANT**, and which is incorporated herein by reference. The **CONSULTANT** further agrees that the services performed pursuant to this task order are necessary for the **OWNER** to meet the deadlines of the **CONSENT**



**DECREE** and that the following requirements and conditions, which are in addition to those provided in the Engineering Services Agreement, shall apply to all work and services performed by the **CONSULTANT** under this task order:

1. Time is of the essence in the performance of the work and services. **CONSULTANT** is aware that the **OWNER** is subject to penalties for non-compliance with the **CONSENT DECREE** deadlines.

2. If delays result solely by reason of acts of the **CONSULTANT**, the **CONSULTANT** shall be held liable for any financial penalties incurred by the **OWNER** as a result of the delay, **including but not limited to those assessed pursuant to the CONSENT DECREE**. Section 6.5 of this Engineering Services Agreement (**Disputes**), shall apply in the event the parties cannot mutually agree upon the cause(s) associated with delays in completing project deliverables. The **CONSULTANT** must immediately notify the **OWNER** in the event of such delay, and provide the **OWNER** a written action plan within five (5) business days on how it will attempt to resolve the delay.

3. In the event that **CONSULTANT'S** delay or other nonperformance of its obligations hereunder results in the imposition of penalties against the **OWNER** pursuant to the **CONSENT DECREE**, or the **OWNER** otherwise suffers damage as a result of such delay or nonperformance, **CONSULTANT** shall be solely liable to **OWNER** for any and all such damages, including any costs and attorney's fees.

**ACCEPTED BY:**

**AUTHORIZED BY:**

\_\_\_\_\_  
Consultant's Authorized Signature

\_\_\_\_\_  
Owner's Authorized Signature

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Date Signed

*Two originals of this work order shall be executed by the Owner and returned to \_\_\_\_\_. A fully executed copy will be returned to the Owner.*



# Sanitary Sewer System Capacity Assurance Consultant

**PREPARED FOR:**  
Lexington-Fayette Urban County  
Government

**PREPARED BY:**  
Stantec Consulting Services Inc.

**APRIL 22, 2022**

**RFP: # 13-2022**



Stantec Consulting Services Inc.  
3052 Beaumont Centre Circle, Lexington KY 40513-1703

April 22, 2022  
File: pr\_847938

**Attention: Todd Slatin, Director**  
Division of Central Purchasing  
Lexington-Fayette Urban County Government  
200 East Main Street, 3rd Floor  
Lexington, KY 40507

Dear Mr. Slatin,

**Reference: RFP #13-2022 for Capacity Assurance Consultant**

**Stantec Consulting Services Inc.** (Stantec) is pleased to submit our proposal for the referenced RFP. Joining our team are **Vision Engineering, LLC** (Vision) and **Lone Camel, PLLC** (LC). Vision is a Lexington-based certified minority-owned business enterprise (MBE). LC is a service-disabled veteran-owned business (VOB) located in Louisville. Adding Vision and LC is a strong demonstration of our commitment to meeting or exceeding your MWDBE and VOB procurement goals for this project.

We will execute the work on your project from our **Lexington office**. We have more than 220 professionals in Lexington and more than 25,000 firmwide should additional expertise be needed.

To assist in your review, we have organized our proposal to match the selection criteria on page 6 of your RFP, and separated each section with tabs. A separate tab in the back of the proposal contains the required procurement forms and addendum acknowledgements.

As you review our proposal, you'll find that our team offers LFUCG numerous advantages:

1. **Continuity in program implementation.** Since the System Capacity Assurance Program (SCAP) launched in July 2013, we've been performing technical reviews on capacity requests and assisting LFUCG in SCAP management and tracking. Our institutional knowledge means that we can transition smoothly to continue implementing the SCAP, minimizing any disruptions to LFUCG or your customers.
2. **Understanding of how all the pieces fit together.** Key members of our team were involved on the SCAP, Sanitary Sewer Assessments (SSAs), and development of your Remedial Measures Plan (RMP). We understand the inter-relationship between the RMP and SCAP and can leverage our understanding of the collection system from the SSAs to support your ongoing inflow and infiltration reduction efforts.
3. **Demonstrated fiscal responsibility with your Consent Decree programs.** We completed our first SCAP contract (2012–2017) well under the contract budget. On the second contract (2017–2022) we have completed all task orders at or below the established budgets. On the Group 1 SSAs, we finished approximately \$114,000 under the contract budget, and we routinely completed our RMP assignments below budgets established by the prime RMP Consultant.

**Reference:** RFP #13-2022 for Capacity Assurance Consultant

4. **Low risk.** We've assigned to this opportunity the same key team members who were responsible for your initial SCAP development and implementation. This means there is no learning curve or unanswered questions about our ability to help you get the job done. You can be confident that this project will be successful, because the Stantec team and LFUCG have been working together since the Program's inception.
5. **Minimal chance of conflicts of interest.** Land development makes up less than 1% of the Stantec Lexington office's annual revenue. We simply don't do development work in Fayette or the surrounding counties. This greatly reduces the chance that we'd have to excuse ourselves from our SCAP implementation duties due to a perceived or actual conflict of interest.
6. **Understanding your CMOM vision and building a team to support it.** Now that the majority of your CMOM program has been internalized by DWQ staff, we know as-needed CMOM assignments will focus on Consent Decree reporting, performing engineering assessments and industry reviews. Our team includes a national CMOM expert along with the individuals who have been supporting your Consent Decree reporting since 2018.
7. **Personal and professional commitment.** We are proud of the program we've built together with you in the city where we all live and work. We want it to succeed as much as you do!

I hope you'll agree our partnership with you over the last 10 years developing and implementing Lexington's SCAP is a positive one, and we look forward to the opportunity to assist you in its continued implementation. Please contact me if you have any questions regarding our submission or if you would like to discuss our qualifications further. Thank you for considering the Stantec team for this important project.

Sincerely,  
**Stantec Consulting Services Inc.**



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**Joe Herman, PE**  
Senior Principal  
Office: (859) 422-3043  
Cell: (859) 806-9282  
joe.herman@stantec.com

**SECTION 1**

# Introduction



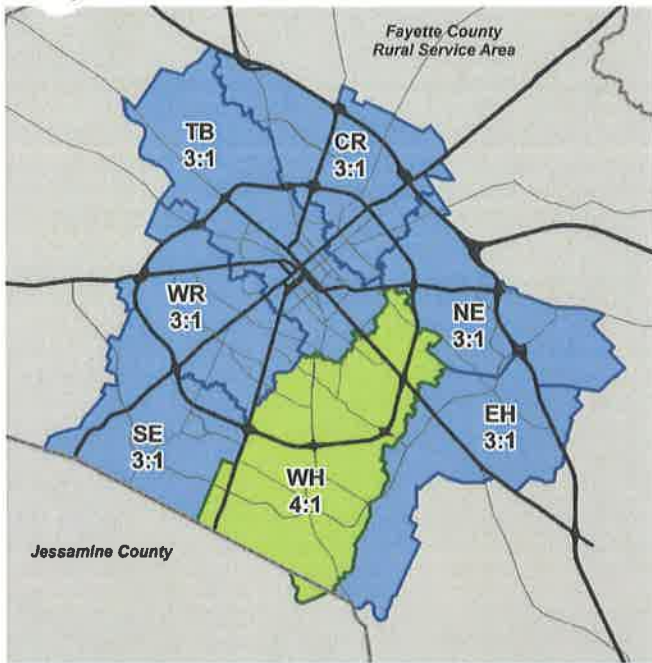
# 1. INTRODUCTION

## BACKGROUND

Section VII.16B of the Consent Decree obligates LFUCG to implement a System Capacity Assurance Program (SCAP) for your sanitary sewer system. Under the SCAP provisions, LFUCG may only authorize new connections (or flow additions) if adequate capacity can be certified in the collection, transmission, and wastewater treatment systems. In the absence of this certification, new connections may also be authorized by using a “banked credit system”. The system allows flow removal from qualifying improvements (eg. I/I removal, off-line storage, capacity enhancements) to offset flow from new connections at an exchange rate (or trade ratio) prescribed in the Consent Decree. All capacity request approvals to date have been via the banked credits system.

On the following page you'll find a timeline that highlights key milestones in the development and implementation of LFUCG's SCAP. Additional milestones relative to LFUCG's Remedial Measures Plan (RMP) and Sanitary Sewer Assessments (SSAs) are also included in the timeline. Both the RMP and SSAs are integral to continued SCAP implementation.

- The SCAP consultant performs hydraulic modeling to support final planning and design efforts for RMP capital improvement projects to verify the improvements will allow certification of adequate capacity. Additionally, earned capacity from completed RMP projects is harvested to replenish capacity reserves within the banked credits system.
- System condition information collected during the SSAs, in conjunction with subsequent field investigation activities completed by the Division of Water Quality as part of their annual inflow and infiltration reduction program, is vital to understanding earned credit potential within the system. Inflow and infiltration removal efforts provide a mechanism to allow for continued economic development within Lexington, while carefully preserving environmental quality. Collected SSA and other field inspection information is used to identify/manage opportunities to remove extraneous water that can be used to offset flow additions from new connections and redevelopment activities.



Until the major capital improvements in the RMP are complete, reclaimed hydraulic capacity from collection system improvements will offset flow additions from new development and avoid worsening sanitary sewer overflows (SSOs).



Over the last nine years, LFUCG has reduced the number of capacity banks from 54 to 31. You eliminated SSOs and sewer surcharging by completing RMP capital improvements and eliminating inflow and infiltration (I&I) in the collection system.



## LOOKING AHEAD

The timeline on the previous page looked back at the key milestones for developing the SCAP. Looking forward over the next one to five years, the SCAP implementation will include:

- Technical review of received capacity request and maintenance of the bank ledgers in accordance with the requirements outlined in the approved SCAP Plan;
- Merging capacity banks, per established protocols, as hydraulic capacity is restored through completion of RMP and other capital projects;
- Harvesting earned capacity from completed capital improvements and qualifying sewer rehabilitation activities;
- Maintenance of the Capacity Tracking Information Management System (CTIMS) web portal used to track/manage the SCAP;
- Management and annual recalibration of the hydraulic model of LFUCG's sewer system;
- Modification of the SCAP ordinance needed to incorporate local policy decisions (non-regulatory) changes to SCAP implementation;
- Hydraulic modeling support during RMP project planning and design efforts;
- Technical support for LFUCG's inflow and infiltration (I/I) removal activities focused on replenishing SCAP banks, restoring adequate capacity, and reducing the need or cost of upcoming RMP projects;
- Technical support in the procurement, management, and/or implementation of services necessary to implement the SCAP;
- Technical support in preparing the quarterly and annual Consent Decree reports; and
- Other Capacity, Management, Operations, and Maintenance (CMOM) tasks as directed by LFUCG.



**With direct involvement in your SCAP, SSAs, and RMP development, we understand how all the "parts" fit together, and we have a detailed understanding of your sewer system and history.**

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## HOW WE'VE ORGANIZED THIS PROPOSAL

To help you evaluate our qualifications, we have organized our proposal to mirror the selection criteria outlined in your RFP. We specifically developed our response to be as concise as possible.

Your time is valuable, and as your SCAP consultant over the past ten years, you've been able to observe firsthand our capabilities, fiscal responsibility, professionalism, and commitment to partnering with you to successfully develop and implement your SCAP.



**SECTION 2**

# **DBE INVOLVEMENT**

2

## 2. DBE INVOLVEMENT

We have teamed with Vision Engineering and Lone Camel for this project. Together, these firms offer our team, LFUCG's SCAP Manager and DWQ Director a wide range of skills and experience for as-needed CMOM and SCAP-related assignments. We are confident their commitment and expertise will help our team meet LFUCG's procurement goals for this contract.



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### **VISION ENGINEERING, LLC (VISION)**

Vision is a certified Minority-Owned Business Enterprise (MBE) headquartered in Lexington, Kentucky. Vision was established in 2003 and employs 19 professionals. Vision will be responsible for providing field data collection services to support hydraulic model refinement/validation when required, and they will also be available for as-needed CMOM assignments.

Vision provides field surveying and plat preparation services for the local development community. To avoid a potential or perceived conflict of interest, Vision will not be involved in the technical review of sewer capacity requests.



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### **LONE CAMEL, PLLC (LC)**

Lone Camel, a Service Disabled Veteran Owned Small Business (SDVOSB), was established in 2020 and is located in Louisville, Kentucky. Dean Garrett, the President of LC, is a West Point graduate and a licensed professional engineer in Kentucky. LC's capabilities include master planning, stakeholder engagement, structural design/analysis, value engineering, site development and permitting, and project management. LC's role on our team will be to support as-needed CMOM assignments.

20%

Stantec and Vision are teamed on your RMP Watershed Design (Team 4) contract. Vision's participation to date is over 20%—twice LFUCG's procurement goal!

**SECTION 3**

# **Firm Expertise**

3

### 3. FIRM EXPERTISE

#### ABOUT STANTEC

Stantec is a multi-disciplinary consulting firm with a proven track record for providing quality wastewater and stormwater services serves to LFUCG for over 30 years. Nationally, Stantec unites over 25,000 employees working in over 400 locations across 6 continents. Locally, we employ more than 220 professionals in our two Lexington offices at 3052 Beaumont Centre Circle and 220 Lexington Green Circle.

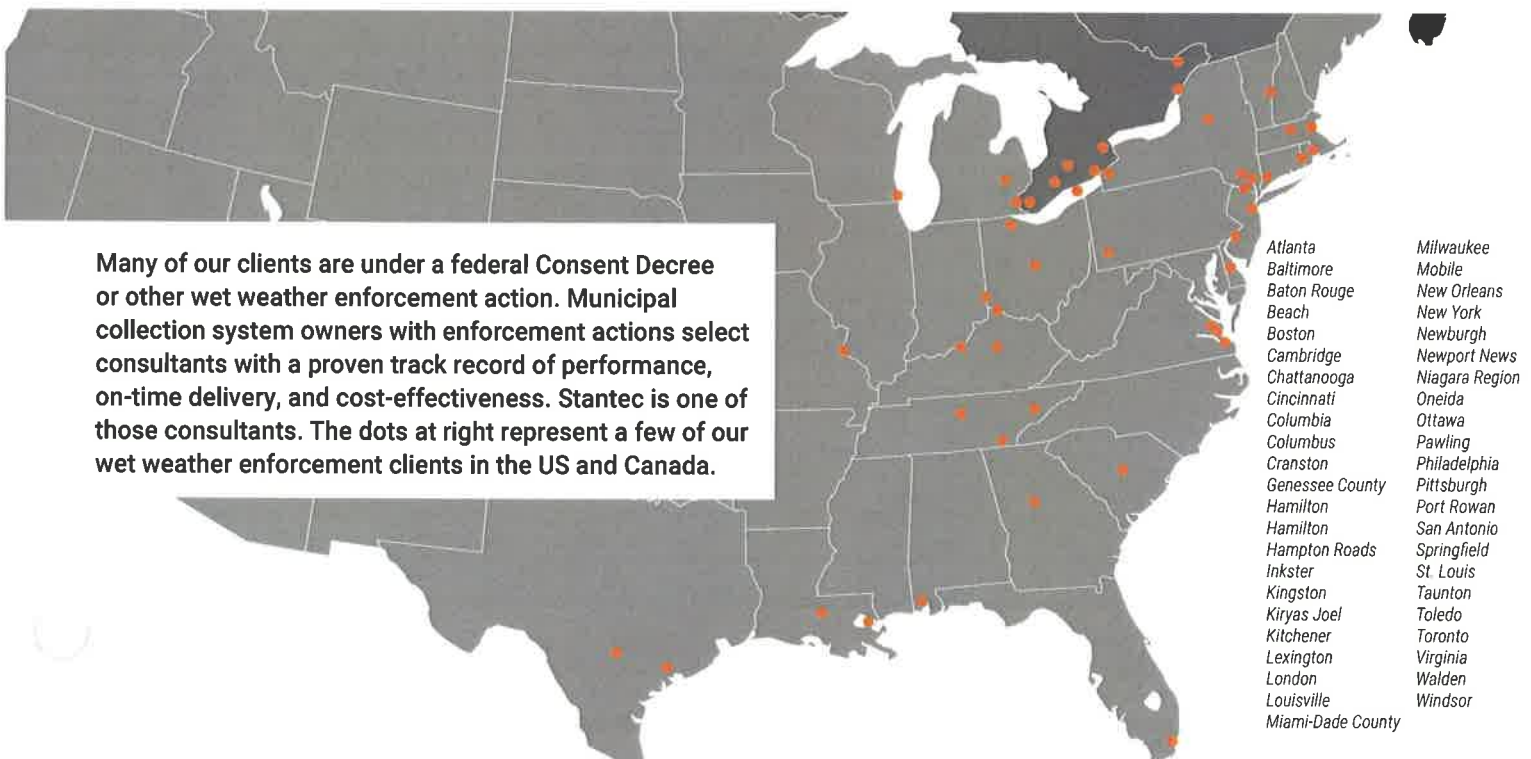
With the acquisition of MWH Global in 2016, we bolstered our wastewater expertise and capabilities. This expertise includes specialized experience in other successful CMOM programs for large municipalities, including: Atlanta (GA), Houston (TX), Baltimore (MD), and Miami-Dade County (FL).

In Lexington, our local Water group has established strong working relationship with the LFUCG Division of Water Quality. Many of our recent assignments with LFUCG have been in a program management capacity associated with the Consent Decree, including: Sanitary Sewer Assessments (Groups 1 – 3 and Blue Sky Rural Service Area), Remedial Measures Plan (initial Plan development), and our ongoing work over the past 10 years on the SCAP.

For the Division of Planning, we recently completed a Sustainable Growth Study and Evaluation of LFUCG’s Exactions Program. These efforts evaluated existing development conditions/ opportunities within the Urban Service Area and provided a strategy for equitable dissolution of the Exaction Program in the Expansion Areas.

Collectively, our relevant experience with both the Divisions of Water Quality and Planning provides us with a complete perspective on future growth areas in Fayette County and potential sewer capacity needs/ramifications.

Stantec trades on the TSX and the NYSE under the symbol STN. Visit us at [stantec.com](http://stantec.com) or find us on social media.



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## RELEVANT PROJECT EXPERIENCE

The following paragraphs represent just a sample of our relevant project experience with a focus on projects involving team members identified on the organizational chart. This experience includes your SCAP, RMP and SSAS, as well as wet weather program experience with other progressive communities. The experience has been categorized to mirror the basic competencies required for continued implementation of your SCAP.

### **CAPACITY ASSURANCE PROGRAMS & HYDRAULIC MODELING**

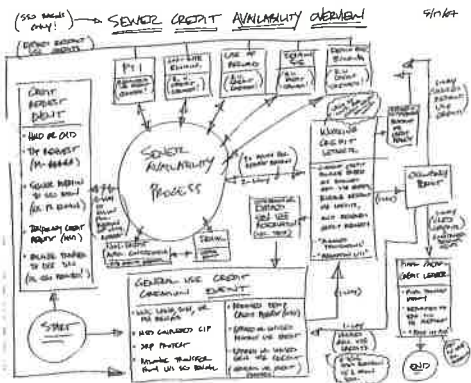
#### **SYSTEM CAPACITY ASSURANCE PROGRAM (SCAP), LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT (LFUCG), LEXINGTON, KENTUCKY**

Stantec has served as LFUCG's SCAP Manager under two successive five-year contracts since 2012. In this role, we were responsible for initial program development and ongoing implementation of the SCAP following the July 3, 2013 public roll-out. During program development, we:

- Led the SCAP Task Force meetings with Urban County Council members, LFUCG Divisions/ Departments, and community stakeholders to review and evaluate proposed program elements.
- Prepared a SCAP Task Force Recommendations report that was approved by the Urban County Council.
- Developed a web-based portal (CTIMS) for managing and tracking capacity allocations that includes a public-facing component to foster transparency within the SCAP.
- Harvested earned credits from completed capital improvement and qualifying sewer rehabilitation activities prior to the onset of SCAP implementation.
- Identified and determined capacity needs for grandfathered properties/development.
- Assisted in preparing the SCAP enabling ordinance that was approved by the Urban County Council in June 2013.
- Prepared the SCAP Plan document and assisted in negotiating its approval with the U.S. EPA and Kentucky EPPC.

As part of the ongoing SCAP implementation, we:

- Processed over 1,400 sewer capacity requests for proposed development activities in Fayette County since the July 3, 2013 program launch.
- Developed hydraulic model simulation request and reporting protocols to ensure effective communication/documentation of model results to LFUCG's RMP Team.
- Completed over 400 hydraulic modeling requests to support DWQ and RMP project planning and design efforts.
- Supported annual temporary flow monitoring efforts (2014 – 2022) by identifying flow/ rainfall monitoring needs, preparing exhibits for the RFP, performing bid reviews, and analyzing collected data to support model calibration and identification/prioritization of I&I removal opportunities.
- Performed annual updates/recalibration of the hydraulic model based on annual flow monitoring data and completed capital improvements to the sewer system.



We developed a process diagram that mapped out MSDGC's banked credits program approval process to aid in identifying software needs required to manage/document capacity allocations.

- Developed Earned Credit Forecasting maps to assist LFUGC's SCAP Manager in staying abreast of capacity needs and managing the sewer capacity Wait List.
- Developed a Procedures Manual and Policy Memorandums to document SCAP implementation protocols.
- Supported development of LFUGC's permanent flow monitoring network by identifying locations, preparing technical specifications, and providing QA/QC of collected data to verify proper measurement by the meters.
- Supported LFUGC's quarterly and annual reporting to the EPA and Kentucky EPPC relative to the SCAP.
- Self-performed micro-monitoring and smoke testing in the Floyd Drive area.
- Provided technical support regarding inflow and infiltration removal and capacity-related issues as requested by LFUGC.

**WASTEWATER CAPACITY ASSESSMENT PROGRAM, LOUISVILLE AND JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT (MSD), LOUISVILLE, KENTUCKY**

Louisville MSD selected us to support their Capacity Assurance Program by developing hydraulic models and performing capacity assessments for the Cedar Creek, Floyds Fork, Hite Creek and small water quality treatment center basins within their wastewater system. We were responsible for the development, calibration and validation in the separate wastewater collection system (no combined sewers). Upon initial development and successful validation, we were responsible for using the models to identify areas of adequate capacity and evaluate capacity enhancing projects in hydraulically deficient areas. Modeling support included quantifying flow contributions from future development and determining the impact on existing wastewater treatment capacity. We also supported the development of standard guidelines for the modeling efforts to ensure consistency and preserve comparisons between other sewer basins within MSD's service area.

**SHORT TERM ADEQUATE CAPACITY PROGRAM, METROPOLITAN SEWER DISTRICT OF GREATER CINCINNATI (MSDGC), CINCINNATI, OHIO**

Under a Master Service Agreement with MSDGC, we provided on-site staff support to conduct an audit of the Sewer Capacity Credits Program and perform a needs assessment of their in-house software used to track the program. In addition to performing the audit, our scope included the review of recently completed capital improvement projects and qualifying rehabilitation activities to quantify and harvest earned capacity credits. On-site staff support was provided on a full-time basis for a period of three months. Stantec's work on the project is an example of our ability to assist our clients by being flexible in our service delivery and offer critical problem solving expertise to meet their program challenges.

## WASTEWATER SEWER CAPACITY ASSURANCE PROGRAM PILOT FOR THE SCOTT STREET PUMP STATION SERVICE AREA, TORONTO WATER, TORONTO, ONTARIO

We led the development of a demonstration wastewater capacity assurance program for Toronto Water. The program allows the City to avoid a moratorium, while responsibly managing sewer capacity in the Scott Street pump station service area, until I&I removal and capacity improvements can be identified and implemented. Scope included developing the City's program protocols and creating a web-based management system that can be used to track and manage capacity deposits and withdrawals. While the program was initially focused on the immediate needs in the Scott Street pilot area, the demonstration program was designed to facilitate later expansion to Toronto Water's entire service area.



In addition to developing and implementing your SCAP over last 10 years, Stantec has also assisted the Metropolitan Sewer District (MSD) of Greater Cincinnati, Louisville MSD, and Toronto Water (Ontario) on their Capacity Assurance Programs.

## REMEDIAL MEASURES PLAN (RMP) DEVELOPMENT, LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT (LFUCG), LEXINGTON, KENTUCKY

Stantec was part of the three-consultant team that was responsible for initial development of your \$500M+ Remedial Measures Plan. The Plan outlines your wastewater capital improvement program for 13 years and positions you to successfully achieve your federal Consent Decree obligations. Our role on the team included wastewater modeling and evaluation of trunk sewer conveyance and wet weather storage solutions in the Group 3 Sewersheds. In addition, we were solely responsible for characterizing I/I contributions in the collection system and prioritizing rehabilitation recommendations to support LFUCG's annual rehabilitation program. Stantec utilized our in-house Rehabilitation Costing Tool (RCT) to develop preliminary costs for collection system rehabilitation recommendations and proved to be an effective means to rapidly develop reasonable cost estimates for long-term sewer renewal planning.

## SANITARY SEWER CONDITION ASSESSMENTS & I/I REMOVAL PLANNING SANITARY SEWER ASSESSMENTS, LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT (LFUCG), LEXINGTON, KENTUCKY

We led sanitary sewer evaluation survey (SSES) activities and performed an engineering assessment on all seven (7) of your sewersheds and the Blue Sky Rural Service Area. SSES information collected in the field was used to identify I/I sources and assess structural condition of the gravity sewer system. This information is being used by the LFUCG SCAP Manager to aid in identifying capacity earning opportunities in capacity-poor SCAP banks.

The information we collected during the Sanitary Sewer Assessments has aided LFUCG in identifying capacity-earning opportunities.



In the Group 1 Sewersheds, we completed the work approximately \$114,000 under budget. In the Groups 2 and 3 Sewersheds, LFUCG's field services contractor had to be terminated and jeopardized submission of SSA deliverables to the EPA and Kentucky EPPC within the deadlines prescribed in the Consent Decree. We successfully aided LFUCG in on-boarding a new contractor, implemented an aggressive corrective action plan, and completed our engineering assessment in record time, allowing for timely submission of the Consent Decree deliverables.

**CAMP TAYLOR SANITARY SEWER EVALUATION AND REHABILITATION, LOUISVILLE AND JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT (MSD), LOUISVILLE, KENTUCKY**

We performed a comprehensive evaluation on approximately 150,000 linear feet of MSD's wastewater collection system. Sewers ranged in size from 6-inch to 16-inch diameter. The Camp Taylor area was hastily constructed at the onset of World War 1 and evolved into a residential neighborhood over time. A large portion of the sewer system was constructed without regard to infill development. The age of the system and lack of access issues contributed to long-standing SSO and maintenance issues. SSES activities included: closed circuit television (CCTV) inspection, smoke testing, flow monitoring, dye water testing, and private property inspections (both inside/outside homes). We developed rehabilitation recommendations and were responsible for designing sewers which were being relocated to improve access and alignment. Recommended improvements were estimated to reduce wet weather I/I by approximately 1.5 million gallons per day. Based on Stantec's performance in managing the SSES field investigations and development of effective renewal plans in the Camp Taylor neighborhood, we were one of two consultants (out of eight) selected to perform additional SSES investigation and rehabilitation plans in MSD's other sewer basins.

**"I would recommend them (Stantec) to any other agency needing to complete sanitary sewer assessments for rehabilitation design and construction efforts."**

**JOHN LOECHLE, SENIOR INFRASTRUCTURE MANAGER, LOUISVILLE AND JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT**

**NIGHTENGALE SANITARY SEWER EVALUATION AND REHABILITATION, LOUISVILLE AND JEFFERSON COUNTY METROPOLITAN SEWER DISTRICT (MSD), LOUISVILLE, KENTUCKY**

We completed a condition assessment and developed rehabilitation recommendations for approximately 204,000 linear feet of sanitary sewers ranging in size from 4 inches to 36 inches in diameter, and 805 manholes. SSES field activities included: smoke testing, manhole inspections, and CCTV pipe inspections to assess sewer condition. Private property inspections were also performed on nearly 600 homes in the project area to determine the wet weather contribution to the public sewer system from improper private property sources, such as downspouts and sump pumps. Upon completion of the condition assessment, Stantec performed rehabilitation design of sewer improvements, including preparation of design drawings, specifications, bid documents, and capital cost opinions.

**WASTEWATER COLLECTION SYSTEM REHABILITATION PROGRAM, AURORA WATER, AURORA, COLORADO**

We provided sanitary sewer rehabilitation prioritization and design for the City of Aurora to guide their 2015 annual asset renewal program. In this role, we were responsible for reviewing and assessing approximately 2.4M linear feet of closed circuit television (CCTV) pipe inspections to determine structural condition and rehabilitation priorities and costs. Preliminary rehabilitation recommendations and cost opinions were developed using Stantec's Rehabilitation Costing Tool (RCT). The RCT was used to bundle sufficient rehabilitation activities to fit within their \$5M capital improvement budget for 2015. Moreover, the RCT provided Aurora Water with an objective and defensible basis for how they prioritized sewer rehabilitation activities.



### **TARGETED WASTEWATER COLLECTION SYSTEM IMPROVEMENTS, AUSTIN WATER (AW), AUSTIN, TEXAS**

We assisted the City of Austin in developing a risk-based collection system rehabilitation strategy for prioritizing repair/rehabilitation of their wastewater collection system. The strategy was based on pipe condition (risk of failure), criticality (consequence of failure), and reduction in SSOs. Strategy was developed for two priority basins (Fort Upper and Town Lake) and was applied to support development of the City's system-wide collection system rehabilitation program (14M linear feet). We utilized our Rehabilitation Costing Tool (RCT) to develop preliminary rehabilitation recommendations and capital cost opinions to support annual budget forecasting and planning efforts.

### **I/I REDUCTION AND REMEDIATION STRATEGY DEVELOPMENT, REGION OF PEEL (GREATER TORONTO AREA) ONTARIO, CANADA**

The Region of Peel serves approximately 1M persons in the Greater Toronto Metropolitan Area. In recent years, sewage basement flooding and SSOs have prompted the Region to look for a more effective strategy at reducing wet weather flows. We assisted the Region of Peel in developing a comprehensive I/I reduction and mitigation program. The strategy covered three distinct program areas: I/I investigation and studies, capital improvements and diversions, and prevention and residential programs. As part of the effort, we reviewed their ongoing I/I works, identified gaps or opportunities and recommended data collection/documentation needs to support the Region's strategy. Additionally, we estimated the internal resources needed to implement the program and key performance indicators/metrics used to measure its success.

### **MASTER PLANNING FOR GROWTH**

#### **EVALUATION OF EXACTIONS PROGRAM, LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT (LFUCG), LEXINGTON, KENTUCKY**

The Urban Service Area was last expanded in 1996, creating five Expansion Areas in response to the need for available land for continued growth. Accompanying the expansion was the establishment of an Exactions Program to address infrastructure needs within the Expansion Areas. The Program has continued long since its anticipated life span and has been challenging for both the development community and LFUCG. We assisted the Division of Planning in performing an evaluation of LFUCG's existing Exactions Program and provided a framework for completion of remaining infrastructure and equitable dissolution of the Program. Stantec led focused meetings with internal stakeholders responsible for administration of the program, as well as those developers who have participated in the Program and/or own land in the

Expansion Areas. Feedback was solicited to ensure Program dissolution recommendations considered the concerns/impacts to each affected stakeholder.

#### **SUSTAINABLE GROWTH STUDY, LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT (LFUCG), LEXINGTON, KENTUCKY**

We worked with the Mayor's Sustainable Growth Task Force and community representatives and stakeholders to assess existing conditions and develop an objective evaluation framework to help guide long-term land use decisions, including the alignment of the Urban Service Boundary (USB). This

included assembling a comprehensive parcel database to account for all vacant land within the USB and developing a data-driven and repeatable process to define growth trends and future demand for residential, retail, commercial, and industrial land in Lexington. We identified criteria



Through our work with the Division of Planning on the Sustainable Growth Study and Exactions Program Evaluation, and with DWQ in developing the SCAP, our Team has led multiple stakeholder engagement and consensus building efforts to tackle LFUCG's programmatic challenges.

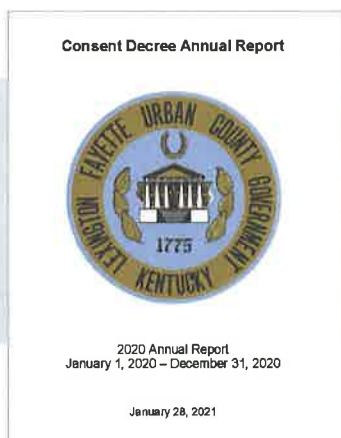
and metrics to evaluate the ability of alternative land use scenarios to meet future land use demand and the stated goals of Imagine Lexington, LFUCG's comprehensive plan, including its primary objectives of encouraging infill development and maximizing the efficient use of existing vacant land. The database and evaluation process are intended to be updated and used annually to ensure that the most updated information is available for land use policy decisions, including the potential expansion of the USB.

## **CMOM**

### **CONSENT DECREE PROGRAM MANAGEMENT, WATER AND SEWER DEPARTMENT (WASD), MIAMI-DADE COUNTY, FLORIDA**

From 1994 thru 2011, Stantec served as the Program Manager for Miami-Dade's Consent Decree Program. The Consent Decree mandated over 1,700 deliverables and approximately \$1B in improvements to WASD's 2,900 mile gravity sewers, 880 miles of force mains, 1,000 pump stations, and three regional wastewater treatment plants. As Program Manager, Stantec was responsible for coordinating the overall implementation of all program tasks and ensuring that all compliance deadlines were met.

Stantec was responsible for developing many of the protocols that WASD uses to manage their system, including development of their Capacity, Management, Operations and Maintenance (CMOM) program. Due to the success of Miami's CMOM program, the EPA used it as the basis for defining requirements in Consent Decrees for other Region 4 communities.



**Stantec has supported LFUCG's quarterly and annual Consent Decree report preparation since 2018.**

### **CMOM PROGRAM, LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT (LFUCG), LEXINGTON, KENTUCKY**

Under a one-year contract, we served as LFUCG's last CMOM Consultant before internalization of the Program by Division of Water Quality staff. Since internalization of the Program, we've provided as-needed assistance through the Capacity Assurance Consultant contract (2012 – 2017). Our CMOM assignments have included: quarterly and annual Consent Decree reporting, assessing implementation of the Gravity Line Preventative Maintenance Program, and researching other utilities programs for cleanup of building sewage backups.

### **CLEAN WATER ATLANTA PROGRAM, CITY OF ATLANTA DEPARTMENT OF WATERSHED MANAGEMENT (DWM), ATLANTA, GEORGIA**

In support of Atlanta's Clean Water Program, Stantec partnered with the City of Atlanta to establish a CMOM-focused operating vision for the City's wastewater infrastructure that



**We'll leverage our knowledge and expertise from our work on other major CMOM programs to complete your as-needed assignments.**

emphasized a continuous improvement philosophy for all O&M activities. Implementation of the CMOM program elements and the institutionalization of the continuous improvement philosophy has resulted in a dramatic reduction in SSO discharges. Other work completed by Stantec in support of the program included:

- Completing a comprehensive SSES of the collection system to define condition and support rehabilitation planning.
- Developing and calibrating their system-wide hydraulic model to assess capacity-limited areas and prioritize sewer rehabilitation projects.
- Assisting in establishing program goals and performance measures for continual improvement collection system O&M, reducing the number of spills by more than 80% and reducing I/I volumes by 25%.
- Developing and maintaining detailed project planning, design and construction schedules for \$382M of sewer rehabilitation projects.
- Utilizing aggressive value-engineering analyses to reduce SSO abatement capital project costs by \$500M and \$130M in CSO reduction capital project costs.
- Stream-lining and automating the sewer rehabilitation design process by developing a customized decision support tool.
- Supporting the City in establishing CD-mandated public education and outreach activities.
- Reduced fats, oils, and grease (FOG)-related SSOs by 48% through FOG planning and enforcement program improvements.

#### **EPA NEGOTIATIONS AND MOM PLANS, HILLSBOROUGH COUNTY PUBLIC UTILITIES DEPARTMENT (HCPUD), TAMPA, FLORIDA**

Hillsborough County owns and operates an approximately 1,200 mile gravity sewer system serving the unincorporated Urban Service Area of the county. Stantec worked with HCPUD staff to negotiate the elements of their Management, Operation and Maintenance (MOM) program. Upon successful negotiation, we were retained to assist in implementation planning and regulatory reporting.

#### **WET WEATHER COMPLIANCE PROGRAM, DEPARTMENT OF PUBLIC WORKS (DPW), BALTIMORE, MARYLAND**

Stantec provided program management services for the City of Baltimore's Wet Weather Compliance Program established to fulfill its obligations under their 2002 federal Consent Decree. The City anticipates spending approximately \$1.5B to approximately 62 sanitary sewer overflows. As part of this effort we:

- Consolidated data from the City's SSES investigations and developed a hydraulic model for all sewers 10-inches or greater in diameter. Upon development of the model, we used the model to identify wet weather hydraulic capacity issues within the system.

- Assisted the City in moving DPW's reactive-approach to operation and maintenance (O&M) to a more proactive approach through the establishment of an Office of Asset Management (OAM). Initially, the OAM was staffed by Stantec who were responsible for establishing the new program, but with the ultimate goal of training DPW staff to fully staff it in the future. The OAM is now fully-functional with Stantec staff successfully exiting all roles in February 2017.
- Assisted the DPW in evaluating options to expand current lateral investigation and repair program elements to more effectively address an increase in the number of "Water in Cellar" (WIC) events.



**SECTION 4**

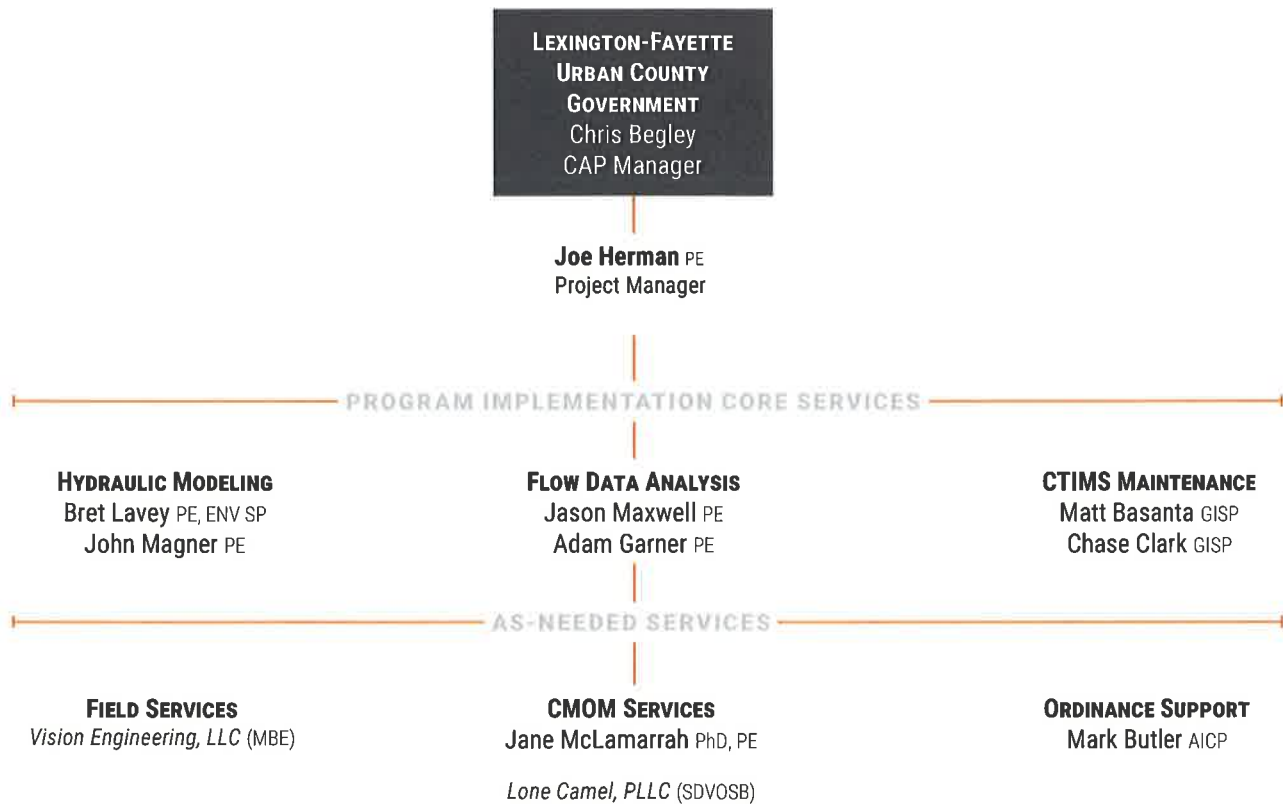
# **Team Expertise**

4

## 4. TEAM EXPERTISE

Our Organizational Chart below identifies key team members and their roles associated with continued implementation of your SCAP. Team members in the Chart are grouped by those performing Core Services (i.e. services required for the ongoing implementation of the SCAP) or As-Needed Services (i.e. those discretionary items that are identified in your RFP and other ancillary services that could support the Core Services).

**25+** YEARS'  
experience managing LFUCG projects for proposed PM Joe Herman.



Team members have been selected for this assignment based on their specialized expertise and experience successfully completing similar projects. Individuals shown in the Chart have also confirmed their availability/capacity to work on this assignment.

Highlights of our Team include:

- A Project Manager with over 25 years' experience, proven fiscal responsibility on your projects, and who has led the development/implementation of your SCAP to date.
- Qualified Team members assigned to each of the Core Services associated with SCAP implementation who had similar roles on our past Capacity Assurance Consultant contracts and who are all physically located in Stantec's Lexington office.
- Team members who not only had a significant role in developing/implementing your SCAP, but also in completing the SSAs in the Group 1 - 3 Sewersheds and in the development of your Remedial Measures Plan.
- Team members who have been responsible for supporting your Consent Decree quarterly and annual reporting since 2018.
- A national CMOM expert in Jane McLamarrah who has assisted other large Consent Decree communities in EPA Region 4 (including Atlanta, GA and Miami, FL) with their CMOM programs.
- A Service-Disabled Veteran Owned Small Business Enterprise (Lone Camel, PLLC), led by a licensed Professional Engineer and Project Management Professional, who will support your as-needed CMOM assignments.
- A local Minority-Owned Business Enterprise (Vision Engineering, LLC) who can provide as-needed data collection services to support hydraulic model refinement and maximizes our ability to meet or exceed your DBE procurement goals for this contract.
- Over 220 professionals in our Lexington office (and 25,000 world-wide) to draw upon should project demands require additional resources.

### TECHNOLOGIES FOR CMOM ACTIVITIES IN WASTEWATER COLLECTION SYSTEMS



**As Task Force Chair, Jane MacLamarrah led the development of the 2022 WEF publication, Technologies for CMOM Activities in Wastewater Collection Systems.**

We think continuity in SCAP implementation is important. It avoids the investment needed to “get up to speed” and provides a seamless transition as LFUCG moves toward adequate capacity certification of their wastewater system. Similarly, a complete understanding of how the SCAP interfaces with (and is impacted by) LFUCG’s other Consent Decree programs allows the Capacity Assurance Consultant to anticipate potential issues and avoid potential missteps.

The matrix below highlights our Project Manager and Core Services Team’s specific experience working on your SCAP and other related Consent Decree programs.

**STANTEC TEAM MEMBER EXPERIENCE ON LFUCG  
CONSENT DECREE PROGRAMS**

<b>PROGRAM</b>	<b>Joe Herman</b>	<b>Jason Maxwell</b>	<b>Bret Lavey</b>	<b>Matt Basanta</b>	<b>John Magner</b>	<b>Adam Garner</b>	<b>Chase Clark</b>
<b>System Capacity Assurance Program (2017 – 2022)</b>	X	X	X	X	X	X	X
<b>System Capacity Assurance Program (2012 – 2017)</b>	X	X	X	X	X	X	X
<b>Capacity, Management Operation &amp; Maintenance (CMOM) Program (2019)</b>	X	X					
<b>Remedial Measures Program (Plan Development Only)</b>	X	X	X	X			
<b>Group 1, 2, 3 Sanitary Sewer Assessments</b>	X	X	X	X			



**SECTION 5**

# Past Performance

5

## 5. PAST PERFORMANCE

### WITH LFUCG

Past performance is where the proverbial rubber meets the road. Fancy adjectives and unverified tales of successes in other communities cannot replace first-hand experience with a prospective consultant, especially if it is on a project of similar nature. First-hand experience provides a filter with which to truly evaluate the consultant's performance after the courtship was over and the work began.

Fortunately, our Team provides you with an unequivocal measure of our past performance through our work on three of your major Consent Decree programs: the SCAP, Sanitary Sewer Assessments (Groups 1, 2 & 3), and development of the Remedial Measures Plan. Our performance on those projects can be readily used to forecast our anticipated performance on the continued implementation of your SCAP. The table below provides an overview of our past performance on these three projects to aid in your evaluation. Think of it as a walk down memory lane.

### PAST PERFORMANCE ON LFUCG CONSENT DECREE PROGRAMS

Project Name	Budget Performance	Schedule Performance
<b>System Capacity Assurance Program (2012 – 2017)</b>	Completed 5-year contract under budget by more than \$200,000. No consultant-initiated change orders.	No late delivery on any SCAP Consent Decree deliverables.
<b>System Capacity Assurance Program (2017 – 2022)</b>	Completed all task orders at or below established budgets. No consultant-initiated change orders.	No late delivery on any SCAP Consent Decree deliverables.
<b>Sanitary Sewer Assessments</b>	Completed Group 1 SSA \$114,000 under budget. One change order for rework associated with termination of LFUCG's initial SSES contractor.	No late delivery on any SSA Consent Decree deliverables. Successfully implemented aggressive corrective action plan to meet Group 2 & 3 Sewershed deliverables after termination of LFUCG's initial SSES contractor.
<b>Remedial Measures Plan Development</b>	Completed work assigned from Prime Consultant under budgeted amount. No change orders for Stantec work assignments.	No late delivery on any RMP Consent Decree deliverable for which Stantec was responsible.



**Stantec has served as LFUCG's Capacity Assurance Consultant since 2012. During this tenure, the SCAP was approved by the USEPA and program implementation has successfully passed independent audits completed in 2016, 2018 & 2020.**

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## WITH OTHERS

We take great pride in the value and level of service we provide our clients and the communities we serve. But don't take our word for it, we encourage you to reach out to our clients. They will give you a first-hand assessment of our performance and quality of our work from an owner's perspective. We have included four client references for projects identified in Section 3 for convenience.

## CLIENT REFERENCE INFORMATION

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Project Name	Client Information	Team Members Involved in Project
<b>Camp Taylor Sanitary Sewer Evaluation and Rehabilitation (Louisville, KY)</b>	John Loechle, PE Senior Infrastructure Manager Louisville and Jefferson County Metropolitan Sewer District (502) 540-6000 john.loechle@louisvillemsd.org	Joe Herman Jason Maxwell Bret Lavey
<b>Hillsborough County EPA Negotiations and MOM Plans (Tampa, FL)</b>	T. Barton Weiss Director, Utility Support Division Hillsborough Co. Public Utilities Dept. (813) 209-3000 weisst@hillsboroughcounty.org	Jane McLamarrah
<b>Capacity Assurance Program Pilot- Scott Street Pump Station Area (Toronto, Ontario)</b>	Jian Lei, PhD, P. Eng. Manager, Sewer Asset Planning Water Infrastructure Management Toronto Water (416) 392-3957 jlei@toronto.ca	Joe Herman Matt Basanta
<b>Targeted Wastewater Collection System Improvements (Austin, TX)</b>	Kevin Koeller, PE Manager, Collections Division Austin Water (512) 972-2055 Kevin.koeller@austintexas.gov	Joe Herman Jason Maxwell Matt Basanta

**SECTION 6**

# **Project Manager Qualifications**

6

## 6. PROJECT MANAGER QUALIFICATIONS

### **JOE HERMAN, PE WILL SERVE AS YOUR PROJECT MANAGER.**

Joe has served as the Project Manager during the development and ongoing implementation of your SCAP for the past 10 years. During this tenure, he:

- Led SCAP Task Force meetings and met with community stakeholders to gather feedback on proposed program elements and authored the SCAP Task Force Recommendations Report that was approved by the Urban County Council.
- Assisted in preparing the SCAP enabling ordinance that was approved by the Urban County Council in June 2013.
- Authored the SCAP Plan document and assisted LFUCG in successfully negotiating its approval with the EPA and Kentucky EEC.
- Supported the Division of Water Quality (and Division of Planning) in materially changing existing land development practices in Fayette County, while striking a positive balance between the needs of existing sewer customers, economic development, and regulatory compliance.
- Provided project management services for the implementation of the SCAP since program launch on July 3, 2013.
- Has developed positive, effective working relationships with DWQ and Division of Planning staff responsible for administering the SCAP.
- Demonstrated fiscal responsibility on assigned task orders. (We have/will complete both prior Capacity Assurance Consultant contracts well under the total contract amount and task order assignments have routinely been completed at or below the established budgets.)

Highlights of his other qualifications are summarized in the bullets below.

Served as Stantec's Project Manager for development your Remedial Measures Plan and understands the inter-relationships between the two programs.

- Led your Group 1, 2, and 3 Sanitary Sewer Assessments and has an excellent understanding of your sewer system and I/I removal opportunities.
- Served as your CMOM Program Manager prior to DWQ's internalization of the Program in 2020.
- Supported your Consent Decree quarterly and annual reporting since 2018.
- Demonstrated experience in successfully meeting technical expectations and schedules on Consent Decree projects.
- A strong project background in collection system rehabilitation planning and I/I removal programs outside of Lexington. (I/I removal and rehabilitation planning align well with the anticipated needs for continued implementation of the SCAP.)

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**SEE JOE'S FULL RESUME STARTING ON THE FOLLOWING PAGE**





## Joe Herman *PE*

*Project Manager  
Lexington, KY*

# 27+

Years of relevant experience

### EDUCATION

- MS/BS, Civil Engineering, University of Kentucky

### RELEVANT REGISTRATION

- Professional Engineer – Kentucky (#21254)



Joe's professional experience includes the assessment, evaluation, design, and management of municipal infrastructure. He is one of Stantec's subject matter experts in wet weather programs with relevant project experience in inflow/infiltration (I/I) investigations, sanitary sewer evaluation surveys (SSES), capacity assurance & CMOM programs, condition assessments, master planning, rehabilitation planning, hydraulic modeling, and engineering design. Joe is currently a member of NASSCO's Infrastructure Assessment Committee. Following are some of the projects Joe has led during his career.

### WET WEATHER PROGRAMS

#### **Wastewater Capacity Assurance Program Manager (2017 – 2022), Lexington, Kentucky**

**Client:** LFUCG

Program Manager for the Lexington-Fayette Urban County Government's (LFUCG) Capacity Assurance Program (CAP). Previously served as LFUCG's CAP Manager from 2012 – 2017 and was responsible for leading its' initial development and approval by the EPA and Commonwealth of Kentucky. In Stantec's ongoing role as CAP Manager, we are responsible for performing technical reviews of capacity requests, maintaining/updating their hydraulic model of the sewer system, identifying annual flow monitoring needs, analysis of flow data to verify effectiveness of I&I reduction measures, providing support to other areas of their Capacity, Management, Operation & Maintenance (CMOM) program, and applying the model to verify adequate capacity to support design efforts on LFUCG's \$600M wastewater capital improvement program.

#### **Demonstration Wastewater Capacity Assurance Program, Toronto, Ontario**

**Client:** Toronto Water

Led the development of a demonstration wastewater capacity assurance program for Toronto Water. The program allows the City to avoid a moratorium, while responsibly managing sewer capacity in the Scott Street wastewater service area, until I&I removal and capacity improvements can be identified and implemented. Scope included developing the City's program protocols and a web-based management system that is used to track and manage capacity deposits and withdrawals. While the program was initially focused on the immediate needs in the Scott Street pilot area, the demonstration program was designed to facilitate later expansion to Toronto Water's entire service area.

#### **Wastewater Capacity Assurance Program Manager (2012 -2017), Lexington, Kentucky**

**Client:** LFUCG

Program Manager for the development of a Capacity Assurance Program (CAP) for LFUCG. The CAP is mandated by federal Consent Decree and requires that LFUCG certify adequate capacity in their wastewater system prior to authorizing new connections or flow increases. The CAP was approved by the EPA and LFUCG began implementation in 2013. In addition to initial program development and its' ongoing implementation, Stantec was responsible for maintaining/recalibrating the hydraulic model of the sewer

system, determining annual flow monitoring needs, analysis of flow data, technical assistance in establishing rehabilitation priorities, and using the hydraulic model to verify adequate capacity to support design efforts on LFUCG's \$600M wastewater capital improvement program. Under this 5-year contract, Stantec completed the work approximately 19% percent below budget and successfully met all regulatory deadlines.

**Capacity, Management, Operations and Maintenance (CMOM) Program Management Consultant, Lexington, Kentucky**

**Client:** LFUCG

Project Manager for a federal Consent Decree-mandated CMOM program for LFUCG. Stantec's assignments included: quarterly and annual Consent Decree reporting, assessing implementation of their Gravity Line Preventative Maintenance Program, and providing training to collection system O&M staff.

**Remedial Measures Plan Program Management Consultant, Lexington, Kentucky**

**Client:** LFUCG

Project Manager for the development of an approximately \$600 million capital wastewater improvement program to eliminate Sanitary Sewer Overflows for the LFUCG. Project was mandated by Consent Decree. Stantec was part of a three-consultant firm team tasked with completing the work within the aggressive schedule established by the EPA. Stantec's responsibilities included: providing rehabilitation recommendations and prioritizations to reduce I&I, hydraulic modeling, capital plan development and solution alternatives analysis, and preparing planning-level cost opinions for long-term capital programming.

**I/I Program and Strategy Development, Region of Peel (Greater Toronto Area) Ontario, Canada**

**Client:** Region of Peel

The Region of Peel is responsible for wastewater collection and treatment for approximately 1M residents located in the Greater Toronto Area (GTA). Joe was the Technical Lead to assist in the development of a strategy to identify and reduce I&I in the Region's wastewater collection system. Joe led the development of the strategy for Program Area #1, which focused on identification and quantification I/I contributions, SSES field activities, as well as measurement of the effectiveness of completed removal activities. The strategy is being used by the region as the "blueprint" to guide their I/I reduction program.

**Sewer Development Credits (Capacity Assurance) Program, Cincinnati, Ohio**

**Client:** Metropolitan Sewer District of Greater Cincinnati

Assisted Metropolitan Sewer District of Greater Cincinnati (MSDGC) in performing an audit of their Sewer Development Credits Program. The program was mandated by a Consent Decree from the Ohio EPA and placed restrictions on new sewer taps in Hamilton County. Concurrent with the audit, Joe reviewed recently completed MSDGC capital improvement projects to identify any unaccounted for earned credits. During the three-month project, Joe relocated to MSDGC's office to facilitate interaction with MSDGC staff and have access to the hard copy files. He was invited back by MSDGC a year later to perform a gap analysis/needs assessment on their existing software used to manage the credits program and make recommendations for improvement.

**Private Property Inflow and Infiltration (PPI/I) Program, Milwaukee, Wisconsin**

**Client:** Milwaukee Metropolitan Sewer District

Technical Advisor to assist MMSD in the implementation of their PPI/I. The program was developed in 2011 and is considered a "best in class" example for other wastewater utilities. Six years into its' implementation, Stantec was brought in by MMSD to assist their Program Management Consultant to improve the effectiveness of the program and "move the needle" in reducing I&I entering MMSD sewer system from satellite collection system owners. Stantec's

strategy utilizes micromonitoring to effectively pinpoint I&I, quantify the effectiveness of sewer rehabilitation measures, and develop a Private Property Knowledge Database. The empirical results included in the PPKD can be used by MMSD to configure future I/I removal project elements to better achieve the target removal goal for the sewer basin.

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## **INFLOW & INFILTRATION/SSSES/REHABILITATION**

### **Targeted Wastewater Collection System Improvements, Austin, Texas**

**Client:** City of Austin

Technical Lead to evaluate CCTV inspection data collected by the City of Austin to develop a risk-based rehabilitation strategy for prioritizing repair/rehabilitation of their wastewater collection system. The strategy is based on pipe condition (risk of failure), criticality (consequence of failure), and reduction in SSOs. Strategy was developed for two priority basins (Fort Upper and Town Lake) and then applied system-wide (14.3M linear feet) to support development of the City's collection system rehabilitation program. Stantec's Rehabilitation Costing Tool was used to develop preliminary rehabilitation recommendations and capital cost opinions to support annual budget forecasting and planning efforts.

### **Wet Weather Flow Reduction to Scott Street Sewage Pumping Station, Toronto, Ontario**

**Client:** City of Toronto

Technical Lead to reduce wet weather flows in the separate and combined sewers that discharge to the Scott Street Pumping Station in downtown Toronto. In the past decade, the City of Toronto's waterfront has seen significant transformation and revitalization. The primary goal of the project was to develop and implement a five-year program to assess and demonstrate how the City can feasibly and cost-effectively remove enough extraneous flow to accommodate growth demands and, in so doing, either avoid or significantly reduce more costly capital investments.

### **East Hickman, West Hickman, and Wolf Run (Group 1) Sewersheds Sanitary Sewer Assessments (SSA) | Lexington, Kentucky**

**Client:** LFUCG

Project Manager for a comprehensive sanitary sewer assessment for LFUCG. The project involved performing field data collection activities and completing an engineering assessment of the City's sanitary sewer system to assess the structural condition of their sewer system and identify inflow and infiltration sources. The project was mandated by Consent Decree. Stantec utilized its custom pipe scoring system to prioritize sewer rehabilitations from PACP coded defects. Stantec's engineering assessment was used by LFUCG to assist in the development of the City's \$600M Remedial Measures Plan. Specific field activities performed during the SSA included: flow monitoring (113 meters), rainfall monitoring (16 gages), manhole inspections (10,000 manholes), smoke testing (2.5M linear feet), groundwater monitoring (60 meters), dye water flooding/testing (50 tests), night flow isolation (300 locations), sewer cleaning and televising (660,000 linear feet), raising buried manholes (1,000 raises), and bypass pumping.

### **Cane Run, Town Branch, North and South Elkhorn (Groups 2 & 3) Sewersheds Sanitary Sewer Assessments (SSA), Lexington, Kentucky**

**Client:** LFUCG

Project Manager for a Sanitary Sewer Assessment that encompassed approximately half of the wastewater collection system owned by LFUCG. The project was mandated by federal Consent Decree. Joe was responsible for: field coordination and oversight of LFUCG's SSES contractors, performing QA/QC on collected data, and providing an engineering assessment of the structural condition and identifying inflow and infiltration sources within the collection system. Joe also led the development of a priority scoring system that utilizes the PACP defect ratings that was used for prioritizing rehabilitation and identifying immediate find and fix opportunities. Specific



field activities included: flow monitoring (111 meters), rainfall monitoring (23 gages), manhole inspections (13,300 manholes), smoke testing (2.6 million linear feet), groundwater monitoring (53 meters), dye water flooding/testing (64 tests), night flow isolation (185 locations), sewer cleaning and televising (640,000 linear feet), raising buried manholes, and bypass pumping.

### **Sanitary Sewer Assessment, Pittsfield Township, Michigan**

**Client:** Pittsfield Township

Assisted the city in performing inspection and assessment of over 260,000 linear feet of sanitary sewer and approximately 1,250 manholes. Work was performed through the Stormwater, Asset Management, and Wastewater (SAW) Program administered by the Michigan Department of Environmental Quality (MDEQ). Joe was the Technical Lead on the condition assessment and was responsible for providing technical oversight and guidance on field inspection efforts, QA/QC of collected data, and development of preliminary rehabilitation recommendations, priorities and cost opinions.

### **Citywide Sewer Assessment, Burton, Michigan**

**Client:** City of Burton, Michigan

The City of Burton owns and operates approximately 110 miles sanitary sewers and 2,400 manholes. Stantec assisted the City in developing a sustainable Asset Management Program that allows for efficient day to day operation and will ensure that funding is available for infrastructure improvements. Work included deployment of asset management software and condition assessment of their sanitary sewer system. Joe was the Technical Lead on the condition assessment and was responsible for providing technical guidance on field inspection efforts, QA/QC of collected data, and development of preliminary rehabilitation recommendations, priorities and cost opinions. Work was completed under Michigan's Stormwater, Asset Management, and Wastewater (SAW) program and subject to technical reviews/approval by the state regulatory agency.

### **Focused SSES and Rehabilitation – South Chickamauga Creek 1 (Phase 2), Chattanooga, Tennessee**

**Client:** City of Chattanooga

Project Manager for the rehabilitation/replacement of approximately 5,500 linear feet of sanitary sewer trunk sewer ranging in size from 12-inch to 18-inch diameter. Located in the floodplain for the Tennessee River and South Chickamauga Creek, sewer improvements presented constructability, access, and permitting challenges. Project was part of City's Consent Decree obligations and required strict adherence to regulatory-mandated deadlines. Scope of work included: closed-circuit television inspection (CCTV) of the existing sewer, condition assessment, Preliminary Engineering Report, development of design drawings/specifications, preparing opinion of probable construction cost, permitting, bidding and construction services.

### **Inflow/Infiltration (I/I) Removal Study, Clayton County, Georgia**

**Client:** Clayton County Water Authority

Project Manager on a sewer system evaluation study (SSES) to identify sources of I/I in the wastewater collection system for the Clayton County Water Authority (CCWA), located in the southern Atlanta metropolitan area. The project was performed to assist CCWA in quantify the effectiveness of I/I removal efforts. CCWA utilized the information to evaluate whether I/I removal would be successful in restoring sufficient capacity at their wastewater treatment plant and allow them to postpone its expansion. The project included: flow monitoring, micro-monitoring, CCTV inspection, smoke testing, dye testing, and manhole inspections. Information collected by Stantec was used to guide CCWA's in-house rehabilitation program.

**Camp Taylor Sewer System Evaluation Survey (SSES), Louisville, Kentucky****Client:** Jefferson County Metropolitan Sewer District

Provided technical oversight and QA/QC a sewer system evaluation survey (SSES) on an approximately 145,000 linear feet collection system for the Louisville and Jefferson County Metropolitan Sewer District (MSD). Stantec's scope included performing a comprehensive sanitary sewer assessment of the system including: flow monitoring, smoke testing, CCTV inspection, manhole inspections, private property inspections, wet weather observations, and dye flooding. In addition, Stantec was responsible for quantifying I&I contributions and providing rehabilitation and capital improvement recommendations.

**Annual Condition Assessment and Rehabilitation Design, Aurora, Colorado****Client:** City of Aurora

Technical Lead to develop recommendations to support development of a \$5M sewer rehabilitation project for the City of Aurora, Colorado. Joe was responsible for leading the condition assessment of existing sewers, prioritization and development of preliminary rehabilitation recommendations, and preparation of capital construction cost opinions. Rehabilitation recommendations were made from review of 2.4M linear feet of CCTV inspections for pipe ranging in size from 6-inch to 18-inch diameter.

**Trafton Street Wastewater Pump Station Elimination Feasibility Study, Lexington, Kentucky****Client:** LFUGG

Project Manager on a feasibility study to eliminate two small municipal wastewater collection pump stations. Study was performed to capitalize on a planned new penetration through an existing railroad embankment associated with stormwater improvements in the area. Feasibility study consisted of identifying gravity sewer options that could be constructed parallel to the proposed storm sewer to eliminate the need for the pump stations.

**Sewer System Evaluation Survey (SSES), Manteca, California****Client:** City of Manteca

Technical Lead for the inspection and condition assessment of approximately 55,000 linear feet of sanitary sewers ranging in size from 10-inch to 60-inch diameter. Work also included inspection and condition assessment of approximately 200 manholes. Was responsible for assisting the Project Manager in managing the field investigation effort and led the condition assessment to develop preliminary rehabilitation recommendations and cost opinions.

**Shelby Park Collection System Rehabilitation Design, Nashville, Tennessee****Client:** Nashville Metro Water Services

Technical Advisor on the rehabilitation of approximately 49,000 linear feet of wastewater collection system in a mature residential neighborhood in Nashville, Tennessee. Project involved reviewing closed-circuit television CCTV inspection of sewers ranging in size from 8-inch to 15-inch diameter and developing rehabilitation recommendations based on Nashville Metro Water Services' engineering standards. Upon acceptance of rehabilitation recommendations, Stantec was responsible for developing rehabilitation design drawings, specifications, bid documents, and engineering cost opinion. Joe was responsible for developing the project approach and providing technical oversight and QA/QC of project deliverables.

**On-Call Wastewater Collection System Engineering Services, Minnetonka, Minnesota****Client:** City of Minnetonka

Under a multi-year Master Service Agreement with the City of Minnetonka, Stantec provided flow monitoring, sanitary sewer assessment and rehabilitation design services. Joe served

as Technical Lead on two task orders under this contract. On the first, micromonitoring was performed to quantify and isolate inflow and infiltration sources in a private sewer system serving the Ridgedale Mall area. Joe was responsible for determining meter locations and analyzing flow data results to further isolate I&I sources. On the second task order, Joe led the condition assessment and development of preliminary rehabilitation recommendations and capital construction cost opinions for approximately 1.5M linear feet of wastewater collection sewers from closed circuit television (CCTV) inspection data.

#### **Sewer Lateral Pilot Study, Cincinnati, Ohio**

**Client:** Metropolitan Sewer District of Greater Cincinnati

Provided project management and QA/QC oversight for a pilot study to evaluate the level of effort required to incorporate sewer lateral information from Metropolitan Sewer District of Greater Cincinnati (MSDGC) hard copy historic tap cards/drawings into their native GIS. Services were provided on-site at MSD offices to facilitate access to the hard copy records. Pilot study was conducted over a 30-day period and resulted in incorporation of over 11,000 sewer laterals into the GIS. Following the successful outcome of the pilot study, MSD contracted with Stantec to assist in entering the county's remaining 225,000+ sewer laterals into their GIS.

#### **Cane Run Sanitary Trunk Sewer and Pumping Rehabilitation, Lexington, Kentucky**

**Client:** LFUCG

Technical Lead for the evaluation and rehabilitation of approximately 40,000 linear feet of sanitary trunk sewer for LFUCG. The purpose of the project was to identify sanitary sewer overflows in the system and design rehabilitation solutions to eliminate them. Responsibilities included conducting a Sewer System Evaluation Survey (SSES), which included: manhole inspections, field surveying, flow and rainfall monitoring, pipe cleaning and CCTV inspection, and smoke testing. Joe was also responsible for development of a SWMM model for their trunk sewers; development and evaluation of rehabilitation alternatives to restore adequate capacity and eliminate sanitary sewer overflows (SSOs). Joe's responsibilities also included conducting several public meetings with affected neighborhood associations and presenting findings to the Urban County Council.

#### **Sanitary Sewer Assessment, Wadsworth, Ohio**

**Client:** City of Wadsworth

Assisted the City in developing a program to assess and remediate sanitary sewer overflows (SSOs) with their gravity collection system. Performed a condition assessment on approximately 560,000 linear feet (2,340 pipes) of wastewater sewer ranging in size from 6-inch to 42-inch diameter. Joe was the Technical Lead on the condition assessment and was responsible for development of preliminary rehabilitation recommendations, cost opinions and condition scoring to support rehabilitation prioritization.

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## **PLANNING**

#### **Evaluation of Exactions Program, Lexington, Kentucky**

**Client:** LFUCG

Project Manager for the evaluation of an infrastructure exactions program for the LFUCG. The Program was originally designed to ensure that new infrastructure needed to serve their Expansion Areas was borne by the developments in those areas, but has continued long since its anticipated life span and created challenges for both the development community and LFUCG. Joe led the evaluation and provided a framework for completion of remaining infrastructure and equitable dissolution of the Program. As part of the process, a robust stakeholder engagement effort was undertaken to identify Program issues and dissolution challenges.

**SECTION 7**

# **Risk Management Plan**

7

## 7. RISK MANAGEMENT PLAN

The consultant team you select to implement this Capacity Assurance Program presents LFUCG with two primary risks—potential loss of key personnel, and potential conflicts of interest—which we'll address below.

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### KEY PERSONNEL

If your capacity assurance consultant loses key staff, there are risks that the project could be understaffed, or institutional program knowledge is lost.

Stantec incorporates succession planning into our annual employee performance review discussions. Our deep bench of local professionals combined with Stantec's vast resources worldwide will allow us to smoothly backfill positions without missing a beat should we lose any of the key individuals identified in the organizational chart in Section 4 of this proposal.

While succession planning is important, we work hard to promote a culture where people stick around. Stantec's Lexington office boasts an annual voluntarily turnover rate that is consistently below the national average for comparable engineering firms. In fact:

- Project Manager Joe Herman is celebrating his 25th anniversary with Stantec this month.
- Our task leaders for hydraulic modeling, Bret Lavey, and flow data analysis, Jason Maxwell, have spent their entire engineering careers with Stantec (18 and 16 years, respectively).
- Our task lead for CTIMS maintenance, Matt Basanta, has been with Stantec since he completed his active service commitment with the U.S. Army.
- We've maintained an office in Lexington since 1966.

The key personnel we've identified have all been involved in the development and implementation of your Capacity Assurance Program over the last 10 years. This means LFUCG doesn't have to worry about the loss of institutional project knowledge should we unexpectedly lose a team member.

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### CONFLICT OF INTEREST

Implementing the SCAP presents a possible conflict of interest because developing land within the Urban Service Boundary requires developers to apply and get approval for sewer capacity. The SCAP consultant is responsible for reviewing these sewer capacity requests.

Any land development work our Lexington office does in Fayette County represents less than 1% of our annual revenue, which means our chances of experiencing a conflict of interest are very low. In the last 10 years we've implemented your SCAP, we've only encountered one potential conflict of interest—when the developer/owner applied for sewer capacity for our new office at 3052 Beaumont Centre Circle. Although we are simply a tenant that leases the building (we do not own it or the property it sits on), we notified the DWQ Director before conducting the technical review of the capacity request.

Our MBE subconsultant Vision Engineering does provide survey services to land developers in Lexington. To avoid any potential conflicts, their role will be limited to supporting model verification (field data collection services) and assisting on as-needed CMOM assignments. They will not be involved in performing technical reviews for capacity requests.



**Stantec provides very few land development services in Fayette County, minimizing the potential for conflicts of interest**

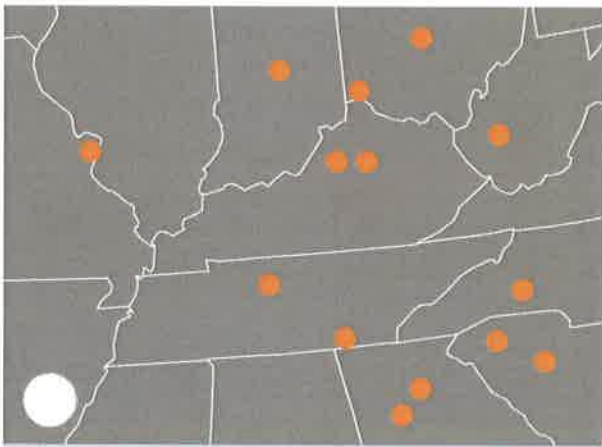
**SECTION 8**

# Office Status and Location of Employees





**Stantec's Lexington office at 3052 Beaumont Centre Circle**



**With more than 300 staff located just in Kentucky, and a total of nearly 650 in the offices marked on the map above, we have more than enough capacity and resources in the region to deliver your program**

## 8. OFFICE STATUS AND LOCATION OF EMPLOYEES

### OFFICE STATUS

We will execute work on this contract from our Lexington office, which is staffed with more than 200 professionals. The Stantec community unites more than 25,000 employees working in over 400 locations across 6 continents. While we don't anticipate a need to call on additional resources, they are only a phone call away should we require any specialty services or expertise.

### LOCATION OF EMPLOYEES

The table below notes the location of our program implementation core services team (see Section 4 for our organizational chart). Our project manager and core services team members are all located in Lexington. That means that LFUCG will benefit from:

- Ready access to our key team members;
- A SCAP consultant familiar with you and your system, and a strong understanding of local issues and land development processes; and
- A trusted partner with a vested interest in this project. We live and work here too, and want to help you deliver a successful outcome!

**TABLE 8.1 PROGRAM IMPLEMENTATION CORE SERVICES TEAM**

	<b>Role on Project</b>	<b>Firm</b>	<b>Location</b>
<b>Joe Herman, PE</b>	Project Manager	Stantec	Lexington, KY
<b>Bret Lavey, PE</b>	Hydraulic Modeling	Stantec	Lexington, KY
<b>John Magner, PE</b>	Hydraulic Modeling	Stantec	Lexington, KY
<b>Jason Maxwell, PE</b>	Flow Data Analysis	Stantec	Lexington, KY
<b>Adam Garner, PE</b>	Flow Data Analysis	Stantec	Lexington, KY
<b>Matt Basanta, GISP</b>	CTIMS Maintenance	Stantec	Lexington, KY
<b>Chase Clark, GISP</b>	CTIMS Maintenance	Stantec	Lexington, KY

**SECTION 9**

# Hourly Rates

9



## 9. HOURLY RATES

Table 1 summarizes the estimated hours and fee for the basic SCAP Scope of Service Deliverables outlined in your RFP. Estimated hours were derived based on a review of our prior level of effort in implementing your SCAP and the assumed quantities provided in the RFP. The estimated hours/fees provided in the table should be considered approximate. Actual hours for some tasks, such as completing capacity review and hydraulic modeling requests, will largely be based on the complexity of the request. As we've done on our past SCAP contracts, LFUCG will only be billed for actual hours, not estimated hours.

**TABLE 1: Estimated Fee Schedule - Basic SCAP Scope Deliverables**

TASK	ESTIMATED TOTAL ANNUAL HOURS FOR TASK	ESTIMATED TOTAL ANNUAL FEE
Overall SCAP project management	108	\$27,000
Public-facing SCAP software development and maintenance.	180	\$27,540
Complete review/issue recommendations for capacity requests (assume 400 per year).	500	\$121,500
Preparation and submission of four (4) Quarterly Reports and one (1) Annual Report to LFUCG.	215	\$38,525
Draft procurement documents, including site maps, for annual flow monitoring (assume 30 sites).	40	\$7,810
Complete analysis of flow data collected at the 30 sites (assume 120-day collection period) and recalibrate model with synthesized data (assume all data is collected for a single watershed).	380	\$68,270
Complete review/issue recommendations for model compliance of capital improvement projects designed as part of the annual CIP (assume 50 per year).	445	\$70,975
Conduct and document monthly project progress meetings with LFUCG SCAP staff.	108	\$23,410
<b>ESTIMATED ANNUAL TOTALS</b>	<b>1,976</b>	<b>\$385,030</b>

Table 2 summarizes the hourly rates for the key (Core Services) SCAP team members identified in our Organizational Chart presented in Section 4.0. No mark-up will be applied to subconsultant fees. LFUCG will not be billed mileage costs for travel within Fayette County. Other direct expenses will be billed at actual cost (no mark-up).

**TABLE 2: Hourly Rates for Key SCAP Team Members**

TITLE	HOURLY RATE
Joe Herman	\$250.00 / hour
Bret Lavey	\$215.00 / hour
Jason Maxwell	\$163.00 / hour
Matt Basanta	\$153.00 / hour
John Magner	\$150.00 / hour
Adam Garner	\$135.00 / hour
Chase Clark	\$135.00 / hour

**ATTACHMENTS**

# Required Forms

Firm Submitting Proposal: Stantec Consulting Services Inc.

Complete Address: 3052 Beaumont Centre Cir., Lexington, KY 40513  
Street City Zip

Contact Name: Joe Herman Title: Senior Principal

Telephone Number: 859-422-3043 Fax Number: 859-422-3100

Email address: joe.herman@stantec.com

## AFFIDAVIT

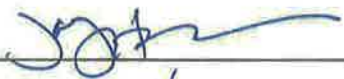
Comes the Affiant, Stantec Consulting Services Inc., and after being first duly sworn, states under penalty of perjury as follows:

1. His/her name is Joe Herman and he/she is the individual submitting the proposal or is the authorized representative of Stantec Consulting Services Inc., the entity submitting the proposal (hereinafter referred to as "Proposer").
  
2. Proposer will pay all taxes and fees, which are owed to the Lexington-Fayette Urban County Government at the time the proposal is submitted, prior to award of the contract and will maintain a "current" status in regard to those taxes and fees during the life of the contract.
  
3. Proposer will obtain a Lexington-Fayette Urban County Government business license, if applicable, prior to award of the contract.
  
4. Proposer has authorized the Division of Central Purchasing to verify the above-mentioned information with the Division of Revenue and to disclose to the Urban County Council that taxes and/or fees are delinquent or that a business license has not been obtained.
  
5. Proposer has not knowingly violated any provision of the campaign finance laws of the Commonwealth of Kentucky within the past five (5) years and the award of a contract to the Proposer will not violate any provision of the campaign finance laws of the Commonwealth.
  
6. Proposer has not knowingly violated any provision of Chapter 25 of the Lexington-Fayette Urban County Government Code of Ordinances, known as "Ethics Act."

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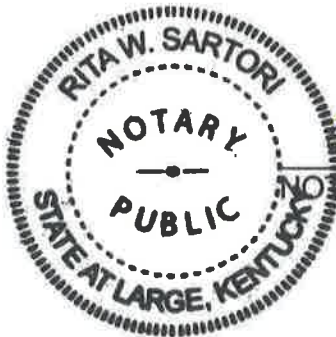
7. Proposer acknowledges that "knowingly" for purposes of this Affidavit means, with respect to conduct or to circumstances described by a statute or ordinance defining an offense, that a person is aware or should have been aware that his conduct is of that nature or that the circumstance exists.

Further, Affiant sayeth naught.

  
\_\_\_\_\_  
STATE OF Kentucky  
COUNTY OF Fayette

The foregoing instrument was subscribed, sworn to and acknowledged before me by Joe Herman on this the 22<sup>nd</sup> day of April, 2022

My Commission expires: August 25, 2022



Rita W Sartori 607362  
NOTARY PUBLIC, STATE AT LARGE

**AMENDMENT 1 —  
CERTIFICATION OF COMPLIANCE FOR AMERICAN RESCUE PLAN ACT  
EXPENDITURES**

The Lexington-Fayette Urban County Government (“LFUCG”) may classify the subject matter of this bid as an expenditure under the American Rescue Plan Act of 2021. Expenditures under the American Rescue Plan Act of 2021 require evidence of the contractor’s compliance with Federal law. Therefore, by the signature below of an authorized company representative, you certify that the information below is understood, agreed, and correct. Any misrepresentations may result in the termination of the contract and/or prosecution under applicable Federal and State laws concerning false statements and false claims.

**The bidder agrees and understands that in addition to all conditions stated within the attached bid documents, the following conditions will also apply to any Agreement entered between bidder and LFUCG, if LFUCG classifies the subject matter of this bid as an expenditure under the American Rescue Plan Act. The bidder further certifies that it can and will comply with these conditions, if this bid is accepted and an Agreement is executed:**

1. Any Agreement executed as a result of acceptance of this bid may be governed in accordance with 2 CFR Part 200 and all other applicable Federal law and regulations and guidance issued by the U.S. Department of the Treasury.

2. Pursuant to 24 CFR 85.43, any Agreement executed as a result of acceptance of this bid can be terminated if the contractor fails to comply with any term of the award. This Agreement may be terminated for convenience in accordance with 24 CFR 85.44 upon written notice by LFUCG. Either party may terminate this Agreement with thirty (30) days written notice to the other party, in which case the Agreement shall terminate on the thirtieth day. In the event of termination, the contractor shall be entitled to that portion of total compensation due under this Agreement as the services rendered bears to the services required. Either party may terminate this Agreement for good cause shown with forty-five (45) days written notice, which shall explain the party’s cause for the termination. If the parties do not reach a settlement before the end of the 45 days, then the Agreement shall terminate on the forty-fifth day.

3. The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

- (1) Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- (2) The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the contractor's legal duty to furnish information.
- (4) The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding a notice to be provided advising the said labor union or workers' representatives of the contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- (7) In the event of the contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part, and the contractor may be declared ineligible for further government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

Provided, however, that in the event a contractor becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction by the administering

agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

4. If fulfillment of the contract requires the contractor to employ mechanic's or laborers, the contractor further agrees that it can and will comply with the following:

- (1) Overtime requirements: No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such a workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such a workweek.
- (2) Violation: liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this section, the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph (1) of this section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph (1) of this section.
- (3) Withholding for unpaid wages and liquidated damages. LFUCG shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the contractor or subcontractor under any such contract or any other federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph (2) of this section.
- (4) Subcontracts. The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraph (1) through (4) of this section and also a clause requiring the subcontractors to include these clauses in any lower-tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower-tier subcontractor with the clauses set forth in paragraphs (1) through (4) of this section.

5. The contractor shall comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq.

6. The contractor shall report each violation to LFUCG and understands and agrees that LFUCG will, in turn, report each violation as required to assure notification to the Treasury Department and the appropriate Environmental Protection Agency Regional Office.



7. The contractor shall include these requirements in numerical paragraphs 5 and 6 in each subcontract exceeding \$100,000 financed in whole or in part with American Rescue Plan Act funding.

8. The contractor shall comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

9. The contractor shall report each violation to LFUCG and understands and agrees that LFUCG will, in turn, report each violation as required to assure notification to the Treasury Department and the appropriate Environmental Protection Agency Regional Office.

10. The contractor shall include these requirements in numerical paragraphs 8 and 9 in each subcontract exceeding \$100,000 financed in whole or in part with American Rescue Plan Act funds.

11. The contractor shall comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq.

12. The contractor shall report each violation to LFUCG and understands and agrees that LFUCG will, in turn, report each violation as required to assure notification to the Treasury Department and the appropriate Environmental Protection Agency regional office.

13. The contractor shall include these requirements in numerical paragraphs 11 and 12 in each subcontract exceeding \$100,000 financed in whole or in part with American Rescue Plan Act funds.

14. The contractor shall include this language in any subcontract it executes to fulfill the terms of this bid: "the sub-grantee, contractor, subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract (or agreement). Title VI also includes protection to persons with 'Limited English Proficiency' in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this contract or agreement."

15. Contractors who apply or bid for an award of \$100,000 or more shall file the required certification that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency. Each tier certifies to the tier above that it will not and has not used federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any federal contract, grant, or any other award covered by 31 U.S.C. § 1352. Each tier shall also disclose any lobbying with non-federal funds that takes place in connection with obtaining any federal award. Such

disclosures are forwarded from tier to tier, up to the recipient. The required certification is included here:

- a. The undersigned certifies, to the best of his or her knowledge and belief, that:
- (1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
  - (2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
  - (3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.
- b. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

  
Signature

4/22/2022  
Date

## EQUAL OPPORTUNITY AGREEMENT

### The Law

- Title VII of the Civil Rights Act of 1964 (amended 1972) states that it is unlawful for an employer to discriminate in employment because of race, color, religion, sex, age (40-70 years) or national origin.
- Executive Order No. 11246 on Nondiscrimination under Federal contract prohibits employment discrimination by contractor and sub-contractor doing business with the Federal Government or recipients of Federal funds. This order was later amended by Executive Order No. 11375 to prohibit discrimination on the basis of sex.
- Section 503 of the Rehabilitation Act of 1973 states:

*The Contractor will not discriminate against any employee or applicant for employment because of physical or mental disability.*

- Section 2012 of the Vietnam Era Veterans Readjustment Act of 1973 requires Affirmative Action on behalf of disabled veterans and veterans of the Vietnam Era by contractors having Federal contracts.
- Section 206(A) of Executive Order 12086, Consolidation of Contract Compliance Functions for Equal Employment Opportunity, states:

*The Secretary of Labor may investigate the employment practices of any Government contractor or sub-contractor to determine whether or not the contractual provisions specified in Section 202 of this order have been violated.*

\*\*\*\*\*

The Lexington-Fayette Urban County Government practices Equal Opportunity in recruiting, hiring and promoting. It is the Government's intent to affirmatively provide employment opportunities for those individuals who have previously not been allowed to enter into the mainstream of society. Because of its importance to the local Government, this policy carries the full endorsement of the Mayor, Commissioners, Directors and all supervisory personnel. In following this commitment to Equal Employment Opportunity and because the Government is the benefactor of the Federal funds, it is both against the Urban County Government policy and illegal for the Government to let contracts to companies which knowingly or unknowingly practice discrimination in their employment practices. Violation of the above mentioned ordinances may cause a contract to be canceled and the contractors may be declared ineligible for future consideration.

Please sign this statement in the appropriate space acknowledging that you have read and understand the provisions contained herein. Return this document as part of your application packet.

### Bidders

*I/We agree to comply with the Civil Rights Laws listed above that govern employment rights of minorities, women, Vietnam veterans, handicapped and aged persons.*

  
\_\_\_\_\_  
Signature

Stantec Consulting Services Inc.  
\_\_\_\_\_  
Name of Business

## GENERAL PROVISIONS

1. Each Respondent shall comply with all Federal, State & Local regulations concerning this type of service or good.

The Respondent agrees to comply with all statutes, rules, and regulations governing safe and healthful working conditions, including the Occupational Health and Safety Act of 1970, 29 U.S.C. 650 *et. seq.*, as amended, and KRS Chapter 338. The Respondent also agrees to notify the LFUCG in writing immediately upon detection of any unsafe and/or unhealthful working conditions at the job site. The Respondent agrees to indemnify, defend and hold the LFUCG harmless from all penalties, fines or other expenses arising out of the alleged violation of said laws.

2. Failure to submit ALL forms and information required in this RFP may be grounds for disqualification.
3. Addenda: All addenda, if any, shall be considered in making the proposal, and such addenda shall be made a part of this RFP. Before submitting a proposal, it is incumbent upon each proposer to be informed as to whether any addenda have been issued, and the failure to cover in the bid any such addenda may result in disqualification of that proposal.
4. Proposal Reservations: LFUCG reserves the right to reject any or all proposals, to award in whole or part, and to waive minor immaterial defects in proposals. LFUCG may consider any alternative proposal that meets its basic needs.
5. Liability: LFUCG is not responsible for any cost incurred by a Respondent in the preparation of proposals.
6. Changes/Alterations: Respondent may change or withdraw a proposal at any time prior to the opening; however, no oral modifications will be allowed. Only letters, or other formal written requests for modifications or corrections of a previously submitted proposal which is addressed in the same manner as the proposal, and received by LFUCG prior to the scheduled closing time for receipt of proposals, will be accepted. The proposal, when opened, will then be corrected in accordance with such written request(s), provided that the written request is contained in a sealed envelope which is plainly marked "modifications of proposal".
7. Clarification of Submittal: LFUCG reserves the right to obtain clarification of any point in a bid or to obtain additional information from a Respondent.
8. Bribery Clause: By his/her signature on the bid, Respondent certifies that no employee of his/hers, any affiliate or Subcontractor, has bribed or attempted

to bribe an officer or employee of the LFUCG.

9. Additional Information: While not necessary, the Respondent may include any product brochures, software documentation, sample reports, or other documentation that may assist LFUCG in better understanding and evaluating the Respondent's response. Additional documentation shall not serve as a substitute for other documentation which is required by this RFP to be submitted with the proposal,
10. Ambiguity, Conflict or other Errors in RFP: If a Respondent discovers any ambiguity, conflict, discrepancy, omission or other error in the RFP, it shall immediately notify LFUCG of such error in writing and request modification or clarification of the document if allowable by the LFUCG.
11. Agreement to Bid Terms: In submitting this proposal, the Respondent agrees that it has carefully examined the specifications and all provisions relating to the work to be done attached hereto and made part of this proposal. By acceptance of a Contract under this RFP, proposer states that it understands the meaning, intent and requirements of the RFP and agrees to the same. The successful Respondent shall warrant that it is familiar with and understands all provisions herein and shall warrant that it can comply with them. No additional compensation to Respondent shall be authorized for services or expenses reasonably covered under these provisions that the proposer omits from its Proposal.
12. Cancellation: If the services to be performed hereunder by the Respondent are not performed in an acceptable manner to the LFUCG, the LFUCG may cancel this contract for cause by providing written notice to the proposer, giving at least thirty (30) days notice of the proposed cancellation and the reasons for same. During that time period, the proposer may seek to bring the performance of services hereunder to a level that is acceptable to the LFUCG, and the LFUCG may rescind the cancellation if such action is in its best interest.

A. Termination for Cause

- (1) LFUCG may terminate a contract because of the contractor's failure to perform its contractual duties
- (2) If a contractor is determined to be in default, LFUCG shall notify the contractor of the determination in writing, and may include a specified date by which the contractor shall cure the identified deficiencies. LFUCG may proceed with termination if the contractor fails to cure the deficiencies within the specified time.

- (3) A default in performance by a contractor for which a contract may be terminated shall include, but shall not necessarily be limited to:
- (a) Failure to perform the contract according to its terms, conditions and specifications;
  - (b) Failure to make delivery within the time specified or according to a delivery schedule fixed by the contract;
  - (c) Late payment or nonpayment of bills for labor, materials, supplies, or equipment furnished in connection with a contract for construction services as evidenced by mechanics' liens filed pursuant to the provisions of KRS Chapter 376, or letters of indebtedness received from creditors by the purchasing agency;
  - (d) Failure to diligently advance the work under a contract for construction services;
  - (e) The filing of a bankruptcy petition by or against the contractor; or
  - (f) Actions that endanger the health, safety or welfare of the LFUCG or its citizens.

#### B. At Will Termination

Notwithstanding the above provisions, the LFUCG may terminate this contract at will in accordance with the law upon providing thirty (30) days written notice of that intent, Payment for services or goods received prior to termination shall be made by the LFUCG provided these goods or services were provided in a manner acceptable to the LFUCG. Payment for those goods and services shall not be unreasonably withheld.

13. **Assignment of Contract:** The contractor shall not assign or subcontract any portion of the Contract without the express written consent of LFUCG. Any purported assignment or subcontract in violation hereof shall be void. It is expressly acknowledged that LFUCG shall never be required or obligated to consent to any request for assignment or subcontract; and further that such refusal to consent can be for any or no reason, fully within the sole discretion of LFUCG.
14. **No Waiver:** No failure or delay by LFUCG in exercising any right, remedy, power or privilege hereunder, nor any single or partial exercise thereof, nor the exercise of any other right, remedy, power or privilege shall operate as a waiver hereof or thereof. No failure or delay by LFUCG in exercising any right, remedy, power or privilege under or in respect of this Contract shall affect the rights, remedies, powers or privileges of LFUCG hereunder or shall operate as a waiver thereof.
15. **Authority to do Business:** The Respondent must be a duly organized and

authorized to do business under the laws of Kentucky. Respondent must be in good standing and have full legal capacity to provide the services specified under this Contract. The Respondent must have all necessary right and lawful authority to enter into this Contract for the full term hereof and that proper corporate or other action has been duly taken authorizing the Respondent to enter into this Contract. The Respondent will provide LFUCG with a copy of a corporate resolution authorizing this action and a letter from an attorney confirming that the proposer is authorized to do business in the State of Kentucky if requested. All proposals must be signed by a duly authorized officer, agent or employee of the Respondent.

16. **Governing Law:** This Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky. In the event of any proceedings regarding this Contract, the Parties agree that the venue shall be the Fayette County Circuit Court or the U.S. District Court for the Eastern District of Kentucky, Lexington Division. All parties expressly consent to personal jurisdiction and venue in such Court for the limited and sole purpose of proceedings relating to this Contract or any rights or obligations arising thereunder. Service of process may be accomplished by following the procedures prescribed by law.
17. **Ability to Meet Obligations:** Respondent affirmatively states that there are no actions, suits or proceedings of any kind pending against Respondent or, to the knowledge of the Respondent, threatened against the Respondent before or by any court, governmental body or agency or other tribunal or authority which would, if adversely determined, have a materially adverse effect on the authority or ability of Respondent to perform its obligations under this Contract, or which question the legality, validity or enforceability hereof or thereof.
18. Contractor understands and agrees that its employees, agents, or subcontractors are not employees of LFUCG for any purpose whatsoever. Contractor is an independent contractor at all times during the performance of the services specified.
19. Contractor [or Vendor or Vendor's Employees] will not appropriate or make use of the Lexington-Fayette Urban County Government (LFUCG) name or any of its trade or service marks or property (including but not limited to any logo or seal), in any promotion, endorsement, advertisement, testimonial or similar use without the prior written consent of the government. If such consent is granted LFUCG reserves the unilateral right, in its sole discretion, to immediately terminate and revoke such use for any reason whatsoever. Contractor agrees that it shall cease and desist from any unauthorized use immediately upon being notified by LFUCG.

20. If any term or provision of this Contract shall be found to be illegal or unenforceable, the remainder of the contract shall remain in full force and such term or provision shall be deemed stricken.

  
Signature

4/22/2022  
Date





**LFUCG MWDBE PARTICIPATION FORM**

**Bid/RFP/Quote Reference #** 13-2022

The MWDBE subcontractors listed have agreed to participate on this Bid/RFP/Quote. If any substitution is made or the total value of the work is changed prior to or after the job is in progress, it is understood that those substitutions must be submitted to Central Purchasing for approval immediately.

<b>MWDBE Company, Name, Address, Phone, Email</b>	<b>Work to be Performed</b>	<b>Total Dollar Value of the Work</b>	<b>% Value of Total Contract</b>
1. Lone Camel, PLLC Garrett Dean, PE, PMP 1001 1/2 Mary St. Louisville, KY 40204 502-907-2167 garrett@lone-camel.com	support as-needed CMOM assignments	To be determined by task order	3% (anticipated)
2. Vision Engineering, LLC 128 East Reynolds Rd. Ste. 150 Jihad Hallany 859-559-0516 jhallany@visionengr.com	field data collection to support Hydraulic model refinement/ validation (when needed)  as-needed CMOM assignments	To be determined by task order	10% (anticipated)
3.			
4.			

The undersigned company representative submits the above list of MWDBE firms to be used in accomplishing the work contained in this Bid/RFP/Quote. Any misrepresentation may result in the termination of the contract and/or be subject to applicable Federal and State laws concerning false statements and false claims.

Stantec Consulting Services

**Company**

4/22/2022

**Date**

Joe Herman

**Company Representative**

Senior Principal

**Title**



**MWDBE QUOTE SUMMARY FORM**

**Bid/RFP/Quote Reference #** 13-2022

**The undersigned acknowledges that the minority subcontractors listed on this form did submit a quote to participate on this project.**

<b>Company Name</b> Stantec Consulting Services Inc.	<b>Contact Person</b> Joe Herman
<b>Address/Phone/Email</b> 3052 Beaumont Centre Cir., Lexington, KY 40513 859-806-9282 joe.herman@stantec.com	<b>Bid Package / Bid Date</b> RFP #13-2022 Capacity Assurance Consultant / April 22, 2022

MWDBE Company Address	Contact Person	Contact Information (work phone, Email, cell)	Date Contacted	Services to be performed	Method of Communication (email, phone meeting, ad, event etc)	Total dollars \$\$ Do Not Leave Blank (Attach Documentation)	MBE * AA HA AS NA Female	Veteran
Lone Camel, PLLC 1001 1/2 Mary St. Louisville, KY 40204	Garrett Dean	502-907-2167 garrett@lone-camel.com	4/13/2022	support as-needed CMOM assignments	Phone, email	TBD based on Task Orders	---	Yes
Vision Engineering, LLC 128 East Reynolds Rd. Ste. 150	Jihad Hallany	859-559-0516 jhallany@visio-nengr.com	4/11/2022	field data collection to support	Phone, email	TBD based on Task Orders	AS	
				Hydraulic model refinement/ validation (when needed)				
				as-needed CMOM assignments				

**(MBE designation / AA=African American / HA= Hispanic American/AS = Asian American/Pacific Islander/ NA= Native American)**

The undersigned acknowledges that all information is accurate. Any misrepresentation may result in termination of the contract and/or be subject to applicable Federal and State laws concerning false statements and claims.

Stantec Consulting Services Inc.  
**Company**

Joe Herman  
**Company Representative**

4/22/2022  
**Date**

Senior Principal  
**Title**

**WORKFORCE ANALYSIS FORM**

Name of Organization: Stantec Consulting Services Inc. (Lexington, Kentucky location)

Categories	Total	White (Not Hispanic or Latino)		Hispanic or Latino		Black or African-American (Not Hispanic or Latino)		Native Hawaiian and Other Pacific Islander (Not Hispanic or Latino)		Asian (Not Hispanic or Latino)		American Indian or Alaskan Native (not Hispanic or Latino)		Two or more races (Not Hispanic or Latino)		Total	
		M	F	M	F	M	F	M	F	M	F	M	F	M	F	M	F
Administrators																	
Professionals																	
Superintendents																	
Supervisors		<b>See Attached</b>															
Foremen																	
Technicians																	
Protective Service																	
Para-Professionals																	
Office/Clerical																	
Skilled Craft																	
Service/Maintenance																	
<b>Total:</b>																	

Prepared by: Christina Hlady  
(Name and Title)

Date: 04 / 13 / 22  
Revised 2015-Dec-15

CO= L357814  
 u= N528711

EQUAL EMPLOYMENT OPPORTUNITY  
 2020 EMPLOYER INFORMATION REPORT EEO-1  
 50 AND OVER EMPLOYEES REPORT

SECTION B - COMPANY IDENTIFICATION

1. STANTEC  
 61 COMMERCIAL STREET  
 ROCHESTER, NY 14614

2.a. Lexington KY  
 3052 Beaumont Centre Circle  
 Lexington, KY 40513

c. EIN= 112167170

SECTION C - TEST FOR FILING REQUIREMENT

1- Y 2- N 3- Y DUNS= 093657427

SECTION E - ESTABLISHMENT INFORMATION  
 NAICS: 541330

SECTION D - EMPLOYMENT DATA

JOB CATEGORIES	HISPANIC OR LATINO		NOT-HISPANIC OR LATINO												OVERALL TOTALS	
	MALE	FEMALE	***** MALE *****						***** FEMALE *****							
			WHITE	BLACK OR AFRICAN AMERICAN	NATIVE HAWAIIAN OR PACIFIC ISLANDER	ASIAN	AMERICAN INDIAN OR ALASKAN NATIVE	TWO OR MORE RACES	WHITE	BLACK OR AFRICAN AMERICAN	NATIVE HAWAIIAN OR PACIFIC ISLANDER	ASIAN	AMERICAN INDIAN OR ALASKAN NATIVE	TWO OR MORE RACES		
EXECUTIVE/Sr OFFICIALS & MGRS	0	0	1	0	0	0	0	0	0	0	0	0	0	0	0	1
FIRST/MID OFFICIALS & MGRS	2	0	49	0	0	0	0	1	9	0	0	0	0	0	0	61
PROFESSIONALS	2	1	71	2	0	3	0	1	13	0	0	1	0	0	94	
TECHNICIANS	0	0	22	0	0	0	0	1	6	0	0	1	0	0	30	
SALES WORKERS	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
ADMINISTRATIVE SUPPORT	0	0	2	0	0	0	0	0	12	0	0	0	0	0	14	
CRAFT WORKERS	0	0	2	0	0	0	0	0	0	0	0	0	0	0	2	
OPERATIVES	0	0	3	0	0	0	0	0	0	0	0	0	0	0	3	
LABORERS & HELPERS	0	0	14	0	0	0	0	0	0	0	0	0	0	0	14	
SERVICE WORKERS	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	
TOTAL	4	1	164	2	0	3	0	3	40	0	0	2	0	0	219	
PREVIOUS REPORT TOTAL	7	1	170	2	0	3	0	3	48	0	0	2	0	0	236	

SECTION F - REMARKS



# CERTIFICATE OF LIABILITY INSURANCE

5/1/2023

DATE (MM/DD/YYYY)

4/22/2022

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

**IMPORTANT:** If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).


PRODUCER LOCKTON COMPANIES 444 W. 47TH STREET, SUITE 900 KANSAS CITY MO 64112-1906 (816) 960-9000	CONTACT NAME:	
	PHONE (A/C, No. Ext):	FAX (A/C, No):
	E-MAIL ADDRESS:	
INSURER(S) AFFORDING COVERAGE		NAIC #
INSURED 1426517 STANTEC CONSULTING SERVICES INC. 370 INTERLOCKEN BOULEVARD, SUITE 300 BROOMFIELD CO 80021-8012	INSURER A : Berkshire Hathaway Specialty Insurance Company	22276
	INSURER B : Travelers Property Casualty Co of America	25674
	INSURER C :	
	INSURER D :	
	INSURER E :	
	INSURER F :	

COVERAGES                                      CERTIFICATE NUMBER: 14658082                                      REVISION NUMBER: XXXXXXXX

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR LTR	TYPE OF INSURANCE	ADDL INSD	SUBR WVD	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> CONTRACTUAL/CROSS <input checked="" type="checkbox"/> XCU COVERED GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input checked="" type="checkbox"/> PRO-JECT <input checked="" type="checkbox"/> LOC OTHER:	Y	N	47-GLO-307584-04	5/1/2022	5/1/2023	EACH OCCURRENCE \$ 2,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 1,000,000 MED EXP (Any one person) \$ 25,000 PERSONAL & ADV INJURY \$ 2,000,000 GENERAL AGGREGATE \$ 4,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
B B	<input checked="" type="checkbox"/> AUTOMOBILE LIABILITY <input checked="" type="checkbox"/> ANY AUTO <input type="checkbox"/> OWNED AUTOS ONLY <input type="checkbox"/> HIRED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input type="checkbox"/> NON-OWNED AUTOS ONLY	N	N	TC2J-CAP-8E086819 (AOS) TJ-BAP-8E086820	5/1/2022 5/1/2022	5/1/2023 5/1/2023	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ XXXXXXXX BODILY INJURY (Per accident) \$ XXXXXXXX PROPERTY DAMAGE (Per accident) \$ XXXXXXXX \$ XXXXXXXX
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input checked="" type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED      RETENTION \$	N	N	47-UMO-307585-04	5/1/2022	5/1/2023	EACH OCCURRENCE \$ 5,000,000 AGGREGATE \$ 5,000,000 \$ XXXXXXXX
B B B	<input checked="" type="checkbox"/> WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) If yes, describe under DESCRIPTION OF OPERATIONS below	Y/N N	N/A	UB-3P635310 (AOS) UB-3P533004 (MA, WI) EXCEPT FOR OH ND WA WY	5/1/2022 5/1/2022	5/1/2023 5/1/2023	<input checked="" type="checkbox"/> PER STATUTE    OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)  
LEXINGTON, KY. THE LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT, ITS ELECTED AND APPOINTED OFFICIALS, EMPLOYEES, AGENTS, BOARDS, CONSULTANTS, ASSIGNS, VOLUNTEERS AND SUCCESSORS IN INTEREST ARE INCLUDED AS ADDITIONAL INSUREDS AS RESPECTS GENERAL LIABILITY, BUT ONLY ARISING OUT OF THE OPERATIONS OF THE NAMED INSURED, IF REQUIRED BY WRITTEN CONTRACT.

<b>CERTIFICATE HOLDER</b> 14658082 LEXINGTON FAYETTE COUNTY URBAN GOVERNMENT 200 EAST MAIN STREET, SUITE 925 LEXINGTON KY 40507	<b>CANCELLATION</b> SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.
	AUTHORIZED REPRESENTATIVE 

THIS INSTRUMENT PREPARED BY:



Brittany Griffin Smith, Attorney  
Lexington-Fayette Urban County Government  
200 East Main Street, 11<sup>th</sup> floor  
Lexington, Kentucky 40507  
(859) 258-3500

**LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT  
AFFORDABLE HOUSING FUND  
DECLARATION OF COVENANTS AND RESTRICTIONS**

This **DECLARATION OF COVENANTS AND RESTRICTIONS** ("Declaration") is made this 30<sup>th</sup> day of June 2022, by **OAKDALE APARTMENTS, LLC** a Kentucky limited liability company, whose principal address is 1417 Hepburn Avenue, Louisville, Ky. 40204 (herein "Borrower"). Borrower is the holder of an interest of the property in Fayette County, Kentucky, described on Exhibit A attached hereto and made a part hereof (the "Property"). To facilitate the construction and acquisition of Oakdale Apartments, Borrower has been awarded funds in the amount of **TWO MILLION DOLLARS (\$2,000,000.00)** (the "AHF Funds") from the Affordable Housing Fund (the "AHF Program").

1. **OCCUPANCY BY LOW-INCOME PERSONS OR FAMILIES.** In consideration of Lexington-Fayette Urban County Government ("LFUCG") by and through the Office of Affordable Housing, making funds available to Borrower for the construction of the dwelling on the Property, Borrower covenants that the dwelling constructed on the Property described herein shall be maintained as housing for low-income persons or families, which shall be defined as individuals/families with annual gross incomes at or below eighty percent (80%) of the area median income, adjusted for size, as defined by the U.S. Department of Housing and Urban Development ("HUD").

2. **ENFORCEMENT.** The covenants set forth in this Deed shall run with the land described above and, to the fullest extent permitted by law and equity, shall be binding for the benefit and in favor of and enforceable by LFUCG, their successors and assigns.

LFUCG shall be entitled to (a) institute legal action to enforce performance and observance of these covenants, (b) enjoin any acts which are in violation of these covenants, and (c) exercise any other legal or equitable right or remedy with respect to these covenants.

This covenant shall continue in effect from July 1, 2022, through fifteen (15) years from this date. Only LFUCG, or its successors and assigns, has the right to release this Declaration prior to its expiration date.

IN WITNESS WHEREOF, Borrower has executed this Declaration as of the date set forth above.

**OAKDALE APARTMENTS, LLC**, a Kentucky limited liability company

By: Oakdale MM, LLC, its Managing Member

By: [Signature], Member  
Name: James L. Duffy  
Title: Member

COMMONWEALTH OF KENTUCKY )  
COUNTY OF ~~FAYETTE~~ Jefferson )

Subscribed, sworn to and acknowledged before me this 28<sup>th</sup> day of June 2022, by James Duffy, of Oakdale MM, LLC, as Managing Member of Oakdale Apartments, LLC, a Kentucky limited liability company, for and on behalf of said limited liability company.

My commission expires: 11/23/24

[Signature]  
Notary Public



## **EXHIBIT A**

Being all of Lot 2 as shown on the Non-Building Minor Subdivision Plat of Downing Property - Parcel 2 - Lots 2 and 3 (Greendale Hills Unit 3) as it is recorded in Plat Cabinet S, Slide 278 in the office of the Fayette County Clerk.

Being a portion of the same property conveyed to Greendale Properties, LLC, a Kentucky limited liability company who took title by virtue of Deed dated January 2, 2007 and recorded January 10, 2007 in Deed Book 2700, page 110 of the Clerk's Records of Fayette County, Kentucky.



THIS INSTRUMENT PREPARED BY:



Brittany Griffin Smith, Esq.

Attorney

Lexington-Fayette Urban County Government

200 East Main Street

Lexington, Kentucky 40507

(859) 258-3500

**LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT  
AFFORDABLE HOUSING FUND  
SUBORDINATE MORTGAGE**

This **SUBORDINATE MORTGAGE** ("Mortgage"), is made and entered into this 30<sup>th</sup> day of June 2022, by and between **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government created pursuant to KRS 67A, whose principal address is 200 East Main Street, Lexington, Kentucky 40507 (herein "LFUCG") through its **OFFICE OF AFFORDABLE HOUSING**, and **OAKDALE APARTMENTS, LLC**, a Kentucky limited liability company, whose principal address is 1417 Hepburn Avenue, Louisville, Ky. 40204 (herein "Mortgagor").

**WITNESSETH:**

Mortgagor hereby recites and agrees as follows, which recitations and agreements constitute a part of this Mortgage:

**WHEREAS**, Mortgagor is indebted to LFUCG for monies loaned or to be loaned to Mortgagor under the terms of two (2) Affordable Housing Fund Loan Agreements (the "Loan Agreements" and together with the Loan Agreement and all other documents related thereto, the "Loan Documents") of even date herewith, between Mortgagor and LFUCG providing for an Affordable Housing Fund Mortgage Loan disbursed in two sums: of **ONE MILLION TWO HUNDRED THOUSAND DOLLARS (\$1,200,000.00)** and a separate sum of **EIGHT HUNDRED THOUSAND DOLLARS (\$800,000.00)** for a combined Affordable Housing Fund Mortgage Loan of **TWO MILLION DOLLARS** (hereafter, the "Mortgage Loan"); and

A. Mortgagor has determined that it is to Mortgagor's direct and indirect economic benefit that LFUCG make the Mortgage Loan to Mortgagor, and therefore have agreed to execute and deliver this Mortgage in order to secure repayment of the Mortgage Loan.

Terms used herein and not otherwise defined shall have the meaning set forth in the Loan Agreement.

**NOW, THEREFORE, MORTGAGOR**, in consideration of the Mortgage Loan, hereby conveys to LFUCG, with covenant of general warranty all of Mortgagor's right, title and interest in and to Mortgagor's interest in certain real estate located in Fayette County, Kentucky (more particularly described in Exhibit A attached hereto and incorporated herein by reference) (the "Property");

**TOGETHER** with all privileges and appurtenances thereunto belonging, Mortgagor's interest as lessor in any leases affecting the premises, and all revenues, rents, issues and profits from the premises (whether payable under a lease or otherwise), and all the estate, right, title and interest of Mortgagor, at law or in equity, of, in and to the Mortgagor's interest in the Property herein described, and every part thereof, and together with all buildings and improvements now existing or hereafter constructed or placed thereon; and together with all heating, ventilating, and air conditioning equipment relative thereto and all fixtures, now or hereafter located in or upon or affixed to the Property, and all machinery, apparatus, equipment and articles of personal property of every kind and description belonging to Mortgagor, now or hereafter located in or upon or affixed to the Property, all of which are and shall be a part of said Property and a portion of the security for the Mortgage Loan; and together with all insurance or condemnation proceeds accruing or arising or relative to any of the foregoing during the term of this Mortgage;

ALL the foregoing property, interests and rights encumbered by this Mortgage are hereafter collectively referred to as the "Premises".

**TO HAVE AND TO HOLD** the Premises with the privileges and appurtenances thereunto belonging, and all rents, revenues, issues and profits therefrom, unto LFUCG, its successors and assigns, forever, for the uses and purposes herein expressed. Mortgagor covenants that Mortgagor is well seized of the Premises and each portion thereof, and has full right and power to grant, bargain, sell, convey, mortgage and warrant the Mortgagor's interest in the same in the manner and form written. Mortgagor represents and warrants to LFUCG that the granting of this Mortgage has been and is duly authorized. Mortgagor covenants that the Premises are free from all liens and encumbrances whatsoever, excepting; (i) the lien of general taxes not yet due and payable, easements and restrictions of record, and restrictions and zoning laws affecting the Premises, if any; (ii) Permitted Encumbrances (as hereinafter defined); and (iii) any leases as may now or hereafter affect any portion of the Premises. Mortgagor warrants and will defend the Premises, with the privileges and appurtenances thereunto belonging, to LFUCG, its successors and assigns forever, against all claims and demands whatsoever adverse to the interest of LFUCG, at Mortgagor's sole expense.

**THIS MORTGAGE** is given to secure: (a) Payment of the Mortgage Loan, same being evidenced by multiple promissory notes (hereafter the "Notes") of even date herewith and any modifications, extensions or renewals thereof, executed and delivered by Mortgagor to LFUCG, in the aggregate principal amount of **TWO MILLION DOLLARS (\$2,000,000.00)**, and payment of interest thereon at the rate(s) and in the manner provided therein; the entire principal amount advanced and all interest thereon, if not sooner paid, being due and payable by Mortgagor on the dates specified within the Notes; and (b) payment by Mortgagor of its obligations to LFUCG of

all sums expended or advanced by LFUCG pursuant to any provisions and performance of each and every of LFUCG's and Mortgagor's respective covenants, conditions and agreements contained in this Mortgage, the Notes, the Mortgage Loan Agreement and any other instrument or agreement evidencing, securing or otherwise pertaining to the Mortgage Loan (hereafter collectively, the "Mortgage Loan Documents"). (Hereafter all references to the "Mortgage Loan" where appropriate shall include all advances made and expenses incurred by LFUCG pursuant to this Mortgage for the protection of the Premises and all other security for the Mortgage Loan).

**AND MORTGAGOR, AND EACH OF THEM, AND WHEN AND AS APPLICABLE, HEREBY COVENANTS AND AGREES THAT:**

1. Mortgagor agrees to pay the principal of and interest on the Mortgage Loan evidenced by the Notes and secured hereby, to be paid at the times and in the manner provided in the Notes.
2. Mortgagor will pay or will have paid all taxes, assessments, and other similar charges levied upon the Premises before the same become delinquent, and will promptly deliver to LFUCG, if requested, receipts of the proper officers therefor; Mortgagor's failure to pay or to have paid any such charges shall at LFUCG's election constitute a default hereunder. Or, at LFUCG's sole option in the event of delinquency, LFUCG may pay such delinquent taxes, assessments, and charges, including any penalties or interest thereon (of which payment, amount and validity thereof, the receipt of the proper officer shall be conclusive evidence) and any amount so paid by LFUCG shall become immediately due and payable by Mortgagor, shall be secured by this Mortgage and shall bear interest from date of advance until paid at an annual rate equal to twelve percent (12%).
3. Mortgagor hereby assigns to LFUCG all leases and rents, revenues, issues and profits of the Premises (whether or not payable under a lease) as further security for the payment of all amounts by Mortgagor and performance of all Mortgagor's obligations under the Mortgage Loan Documents, and grants LFUCG the right to enter on the Premises for the purpose of collecting same, and to promote, manage and/or operate the Premises or any part thereof in such manner as LFUCG may elect, and to apply the revenues received therefrom, after payment of all necessary charges and expenses, to the obligations secured by this Mortgage, the occurrence and continuation of an Event of Default as defined herein. While this is a present assignment, LFUCG will not exercise its rights hereunder unless and until an Event of Default occurs and is continuing. Mortgagor shall, and hereby agrees that it will, indemnify LFUCG, its officers, agents and employees for and hold each of them harmless from any and all claims and demands whatsoever which may be asserted against LFUCG, its officers, agents or employees by reason of any actual or alleged undertakings or obligations on LFUCG's part to perform or discharge any terms, covenants or agreements relative to use or occupancy of the Premises or any part thereof or for waste committed or permitted on the Premises, or by reason of any actual or allegedly dangerous or defective condition or conditions of the Premises resulting in loss or injury to any lessee or to any other person, including LFUCG's reasonable costs and attorney's fees incurred by reason of any of the foregoing. Provided, that said obligation to indemnify LFUCG shall not apply to any loss, injury or damage caused by the gross negligence or willful misconduct of LFUCG, its officers, agents or employees.

4. Mortgagor, at its own expense will maintain with admitted insurers authorized to do business in the Commonwealth of Kentucky against claims for bodily injury, personal injury, death or property damage occurring on, in or about the Premises or as a result of ownership of the improvements located on the Premises in amounts not less than as set forth in the Loan Agreement. Mortgagor further covenants to keep the improvements now existing or hereafter erected on or in the Premises insured against loss or damage by, or abatement of rental income, resulting from fire and "all risk" perils. Mortgagor covenants to maintain flood insurance as required by the Flood Disaster Protection Act of 1973, as amended and any additional flood insurance required by LFUCG. All perils insured shall be in an amount not less than the full replacement value of the property. Mortgagor agrees to promptly pay or have paid when due all premiums on such insurance and further agrees, if requested by LFUCG, to furnish a certificate from the company carrying such insurance acknowledging that such insurance is adequate in an amount to prevent the operation of any coinsurance provision contained therein. All such insurance shall be carried by companies approved by LFUCG in its reasonable discretion, and the policies and renewals thereof shall be deposited with and held by LFUCG. All policies of insurance required to be maintained by Mortgagor pursuant to this paragraph name as the insured parties Mortgagor and LFUCG, shall be reasonably satisfactory to LFUCG, and shall: (a) provide for the benefit of such holder or holders, that thirty (30) days' prior written notice of suspension, cancellation, termination, modification, non-renewal or lapse or material change of coverage shall be given to all insured parties and that such insurance shall be given to all insured parties and that such insurance shall not be invalidated by any act or neglect of Mortgagor or LFUCG or any owner of the Premises, nor by any foreclosure or other proceedings or notices thereof relating to the Premises or any interest therein, nor by occupation of the Premises for purposes more hazardous than are permitted by such policy and (b) not contain a provision relieving the insurer thereunder of liability for any loss by reason of the existence of other policies of insurance covering the Premises against the peril involved, whether collectible or not.

The originals of all such policies shall be delivered to LFUCG. In the event of Mortgagor's failure to comply with any of the requirements of this paragraph, same shall at LFUCG's option constitute a default hereunder. Or, LFUCG may, in its discretion, obtain any insurance required hereunder and pay the premiums due therefor, and any amounts so paid by LFUCG shall become immediately due and payable by Mortgagor with interest thereon at the rate specified in numerical paragraph (2) hereof until paid, and same shall be secured by this Mortgage.

In the event of any loss or damage to the Premises or any portion thereof, Mortgagor will give immediate notice thereof to LFUCG, and LFUCG may thereupon make proof of claim relative to such loss or damage, if same is not promptly made by Mortgagor. Mortgagor hereby authorizes LFUCG (should LFUCG so elect) to settle, adjust, or compromise any claims for loss, damage, or destruction under any such policy or policies of insurance and collect the proceeds thereof, and to this end hereby grants LFUCG the Mortgagor's power of attorney for such purposes (which power of attorney is a power coupled with an interest, same being irrevocable for the term of this Mortgage); provided, that LFUCG will exercise its rights under this sentence only if an Event of Default occurs and is continuing. Subject to the rights of the Senior Lenders, all such proceeds of fire and extended coverage insurance, to the full extent of the Mortgage Loan, are hereby assigned to LFUCG and shall be payable to LFUCG if LFUCG should so elect, and Mortgagor hereby authorizes and directs any affected insurance company to make payment thereof directly to LFUCG. All such insurance proceeds or any portion thereof shall be applied in whole or in part to

restoration, repair, replacement, or rebuilding of the Premises (collectively, "Restoration") Notwithstanding the foregoing, if no Event of Default exists under the Loan Documents, all insurance proceeds shall be payable to Mortgagor and shall be used for Restoration. The delivery to LFUCG of any such policies or certificates of insurance, or renewals thereof, shall constitute an assignment to LFUCG of all unearned premiums thereon as further security for the payment of the Mortgage Loan. In the event of foreclosure of this Mortgage or other transfer of title to the Premises in extinguishment of the Mortgage Loan, all right, title and interest of Mortgagor in and to any insurance policies then in force shall pass to LFUCG.

5. Mortgagor will have maintained or will maintain the Premises in good condition and repair and will not commit or allow any waste or destruction, reasonable wear and tear excepted. Mortgagor will comply with, or cause to be complied with, any applicable statutes, ordinances, regulations, or requirement of any governmental authority relative to the Premises and the use and maintenance thereof, and will promptly repair, restore, replace, or rebuild any part of the Premises now or hereafter subject to the lien of this Mortgage which may be damaged or destroyed by any casualty or as the result of any proceeding referred to in paragraph (7) hereof. No buildings, structures, or improvements hereafter erected on the Premises shall be removed, demolished, or substantially or structurally altered in any respect by Mortgagor, on Mortgagor's behalf, or by any tenant or by any other party without the prior written consent of LFUCG by its duly authorized officer, LFUCG, and any person authorized by LFUCG, may enter upon and inspect the Premises at all reasonable times.

6. Except for that Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Financing Statement ("**Senior Mortgage**") issued by Borrower in favor of Cedar Rapids Bank and Trust Company ("**Senior Lender**") related to a construction-to-permanent loan in the amount of **\$15,930,000.00**, and that certain Swap Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Financing Statement ("**Swap Mortgage**" and hereafter, with the Senior Mortgage, the "**Permitted Encumbrances**") in favor of Senior Lender, Mortgagor will not create, suffer or allow any charge, lien or encumbrance, without the prior written consent of LFUCG by its duly authorized officer, which consent shall not be unreasonably withheld, conditioned or delayed. Mortgagor will pay or will have paid promptly when due any charges for utilities or services including but not limited to electricity, gas and water; should Mortgagor or any tenant fail to pay such charges, LFUCG may pay the same, and any amount so paid by LFUCG shall become immediately due and payable by Mortgagor with interest at the rate specified in numerical paragraph (2) hereof until paid, and same shall be secured by this Mortgage.

7. If all or any part of the Premises are damaged, taken, or acquired, either temporarily or permanently, in any condemnation proceeding, or by exercise of the right of eminent domain, or by the alteration of the grade of any street affecting the Premises, the amount of any award or other payment for such taking or damages made in consideration thereof, to the extent of the full amount of the Mortgage Loan then remaining unpaid, is hereby assigned by Mortgagor to LFUCG, who may collect and receive the same and give proper receipts therefor in the name of Mortgagor, and the same shall be paid forthwith to LFUCG. To such end, Mortgagor hereby grants to LFUCG the Mortgagor's power of attorney (which power of attorney is a power coupled with an interest and shall be irrevocable for the term of this Mortgage). Any award or payment so received by LFUCG during the continuation of any default may, at the sole option of LFUCG, be retained and applied, in whole or in part, to the Mortgage Loan (whether or not then due and payable), in such manner

as LFUCG may determine and/or released, in whole or in part, to Mortgagor for the purpose of altering, restoring, or rebuilding any part of the Premises which may have been affected by such taking, alteration, or proceeding. Provided that absent the occurrence and continuation of an Event of Default, LFUCG will release said sums to Mortgagor, to be applied to restoration of the Premises. LFUCG shall not be obligated to see to the application of any amounts so released to Mortgagor. In the event of a material and adverse effect upon the value of the Premises by reason of any such damage, taking or acquisition, and should the proceeds or award payable therefor combined with any funds made available by the Mortgagor not satisfy in full the Mortgage Loan, same shall constitute an Event of Default.

8. If LFUCG shall incur or expend any sums, including reasonable attorneys' fees, to sustain the lien of this Mortgage or its priority, or to protect or enforce any of LFUCG's rights hereunder or under any other Mortgage Loan document, to protect the Premises as collateral for the Mortgage Loan, or to recover any portion of the Mortgage Loan, all such sums shall become immediately due and payable by Mortgagor with interest thereon at the rate specified in numerical paragraph (2) hereof until paid. All such sums shall be secured by this Mortgage and shall be a lien on the Premises prior to any right, title, interest, or claim, in, to or upon the Premises attaching or accruing subsequent to the lien of this Mortgage.

9. Mortgagor will not hereafter lease the Premises, except leases executed in Mortgagor's ordinary course of business, nor will Mortgagor assign, alter, terminate or otherwise materially modify the terms of any lease affecting the Premises to which Mortgagor is a party, except residential leases, nor further encumber or assign (in whole or in part) the rents, revenues, income, or profits arising from the Premises or any portion thereof (except in connection with the Permitted Encumbrances) without the prior written consent of LFUCG by its duly authorized officer, or in any other manner impair the value of the Premises or the security of this Mortgage for the payment of the Mortgage Loan.

10. Mortgagor will observe and perform all covenants, conditions, and agreements imposed on it by any lease or leases now or hereafter affecting the Premises, or any portion thereof. If Mortgagor shall default in its performance of any of the terms, covenants, conditions, or obligations imposed upon it by any such lease or leases, which default would give the other party or parties thereto the right to terminate or cancel said lease or leases and if same may have a material adverse effect on the value of the Premises as security or the Mortgage Loan then, at the sole option of LFUCG, the entire Mortgage Loan shall become immediately payable and collectible by foreclosure or otherwise, without notice or demand. Provided, that in the event of any such default by Mortgagor (whether as lessor, lessee, sub lessee or otherwise), after the expiration of all applicable cure periods, LFUCG shall have the right but not the obligation to cure any such default of Mortgagor, in such manner and to the extent LFUCG may deem advisable to protect its interest in the Premises. In the event that LFUCG should so elect, then any and all sums so expended by LFUCG relative to affecting any such cure shall become immediately due and owing LFUCG by Mortgagor, shall be secured hereby and shall bear interest at the rate specified in numerical paragraph (2) hereof until paid.

With respect to the Premises and the operation and promotion thereof, Mortgagor will keep or will cause to be kept proper books of record and account in accordance with generally accepted

accounting principles consistently applied. LFUCG shall have the right to examine said books of record and account at such reasonable times and intervals as LFUCG may elect.

11. In the event that LFUCG (a) grants any extension of time or forbearance for payment of any portion of the Mortgage Loan; (b) takes, or realizes, other additional security for the payment thereof; (c) waives or does not exercise any right granted herein, under the Notes or under any other Mortgage Loan document; (d) grants any release, with or without consideration, of all or any part of the security held for the payment of the Mortgage Loan; (e) amends or modifies in any respect with the consent of Mortgagor any of the terms and provisions hereof or of the Notes; then and in any such event, such act or failure to act shall not release Mortgagor or (if applicable) any of its principals or any co-maker, sureties, or guarantors of this Mortgage or of the Notes, under any covenant of this Mortgage, the Notes or other Loan Documents nor preclude LFUCG from exercising any right or privilege herein or therein granted or intended to be granted in the event of any other existing or subsequent default and without in any manner impairing or affecting the lien or priority of this Mortgage.

12. Mortgagor will not hereafter make or permit, without the prior written consent of LFUCG by its duly authorized officer: (a) any sale of the Premises, or the execution of any contract for deed relative to the Premises, or any assumption of the Mortgage Loan, any condominium conversion or any use of the Premises or any part thereof for any purpose other than that presently contemplated by the parties hereto; (b) after completion of the renovations contemplated by the Plans and Specifications, any material alteration, removal or demolition of any buildings, improvements, fixtures, apparatus, machinery, and equipment now or hereafter located or erected upon the Premises except in the ordinary course of business; (c) any purchase or conditional sale, lease or agreement under which title is reserved in the vendor of any fixtures, apparatus, machinery, equipment or personal property in or upon any of the buildings or improvements comprising a part of the Premises; (d) except in connection with the Permitted Encumbrances, any assignment of the revenues, rents, income or profits from the Premises; (e) except for the Permitted Encumbrances, any mortgage, lien or encumbrance upon the Premises, or any part thereof (whether prior or inferior to the lien of this Mortgage) affecting or adverse to the lien hereof, general and special taxes duly levied and assessed and not yet due and payable and any lease now or hereafter affecting any portion of the Premises. Any of the foregoing without LFUCG's prior written consent, which consent shall not be unreasonably withheld, conditioned, or delayed shall be and constitute a default by Mortgagor on this Mortgage and on the Mortgage Loan.

13. In the event of Mortgagor's default in the performance of any of the covenants and conditions contained in this Mortgage or in the event of Mortgagor's default in payment of the Mortgage Loan or any part thereof, or in the Notes or under any other Loan Document, or under any other covenant or condition contained in any documented executed in connection with the Permitted Encumbrances, and (absent an express contrary grace or curative period) shall such failure, omission or default not have been fully corrected by Mortgagor, as applicable, to the complete satisfaction of LFUCG within thirty (30) days after LFUCG gives Mortgagor written notice of the occurrence of any such default, at the address set forth in the Loan Agreement; and shall such default remain uncured beyond any applicable grace or curative period; or in the event any representation or warranty of the Mortgagor herein contained, or in the event any representation or warranty of the Mortgagor contained in any other Loan Document shall prove to be untrue or misleading in any material respect; or in the event of any petition in bankruptcy,

receivership, or reorganization filed by or against Mortgagor and shall same not be vacated within sixty (60) days); or any assignment or composition for the benefit of creditors made or entered into by Mortgagor; or in the event the Borrower defaults under any loan document executed between the Borrower and a senior lienholder on the Premises; or in the event of any judgment or proceeding entered or brought against Mortgagor or the Premises or to foreclose any lien thereon or on any part thereof; or in the event of a substantial adverse change in financial position of Mortgagor; or in the event of an unauthorized encumbrance or change in ownership of the Premises or of any other security for the Mortgage Loan; or if in the opinion of LFUCG there is any material decline in the value of the Premises or any other security for the Mortgage Loan; or should Mortgagor default on any other indebtedness now or hereafter owing LFUCG by Mortgagor beyond any applicable grace or curative period; then, and in such event, at LFUCG's sole option, without further notice or demand, the same being hereby expressly waived by Mortgagor as evidenced by Mortgagor's execution of this Mortgage, the Mortgage Loan shall become due, payable and collectible. Upon the happening of any such event (hereinafter an "Event of Default"), in addition to any other right of remedy which LFUCG may now or hereafter have at law or in equity, and not by way of limitation, LFUCG shall have the right and power to exercise any or all or any combination of the following remedies: (a) to declare the Mortgage Loan due and payable (and same shall thereupon be due and payable and to foreclose upon this Mortgage and the lien hereof; (b) to sell the Premises according to law as an entirety or in separate parcels; (c) to apply without notice (same being hereby expressly waived by Mortgagor) for the appointment of a receiver to collect the revenues and profits of the Premises and to preserve the security hereof as a matter of right, either before or after any foreclosure sale, without regard to the value of the Premises or any other property as security for the amount due LFUCG, or the solvency of any entity liable for the payment of such amounts; (d) to enter upon and take possession of the Premises without application to any court, with the irrevocable consent of Mortgagor as evidenced by Mortgagor's execution of this Mortgage, and collect the revenues, issues and profits thereof, and, without the appointment of any receiver or application being made therefor, to manage, promote and/or operate the Premises, either in LFUCG's name or Mortgagor's name, by whatever means LFUCG may elect, and receive all the revenues, issues and profits therefrom, and apply the same, after payment of all necessary charges and expenses deemed by LFUCG to be necessary, to payment of the Mortgage Loan. All the foregoing rights and powers are effective and may be enforced by LFUCG either in conjunction with or without any action to foreclose this Mortgage, and without applying at any time for a receiver for the Premises. The foregoing rights and remedies are independent of and in addition to any statutory right to appointment of a receiver. Written notices required by the foregoing paragraph shall be sent by certified mail to the addresses provided in the Loan Agreement.

14. Any sale under this Mortgage shall operate to divest all right, title and interest of Mortgagor in and to the Premises and rights so sold; shall be a perpetual bar both in law and equity against the Mortgagor; and shall be in bar of any equity or right of redemption, the same being expressly waived by Mortgagor.

15. Mortgagor represents and warrants, to its knowledge and belief, that no hazardous substances are present on the Premises, except in compliance with all applicable state and federal laws and regulations relating thereto (collectively, "Environmental Laws"). Furthermore, Mortgagor represents, warrants, and agrees that Mortgagor will not use, generate, treat, store, dispose of or otherwise introduce any such hazardous substances into or on the Premises, except



in compliance with all applicable Environmental Laws. Mortgagor represents, warrants and agrees that there is no current and will be no future unlawful physical (including environmental, natural, artificial, structural or chemical) hazard or potential hazard (including, without limitation, the presence, accumulation or storage of any toxin, toxic waste, toxic affluent or discharge) or condition in or on or affecting the Premises or affecting the health of any person in or on the Premises, except in compliance with all applicable Environmental Laws. The Mortgagor shall pay immediately when due the cost of removal of any such wastes or substances, and shall keep the Premises free of any lien imposed pursuant to laws, rules, regulations and orders pertaining to hazardous wastes or substances and the removal thereof; in the event Mortgagor fails to do so, it shall be deemed an Event of Default. The Mortgagor shall indemnify LFUCG and hold LFUCG harmless from and against all loss, cost, damage and expense (including, without limitation, attorneys' fees and costs incurred in the investigation, defense and/or settlement of claims) that LFUCG may incur as a result of or in connection with the assertion against LFUCG of any claim relating to the presence or removal of any hazardous waste or substance referred to in this paragraph, or compliance with any federal, state or local laws, rules, regulations or orders relating thereto. The obligations of Mortgagor under this paragraph to indemnify LFUCG and hold LFUCG harmless shall survive payment of the Mortgage Loan and Note and shall survive release of this Mortgage and shall extend to the representatives, successors and assigns of LFUCG.

16. Whenever used in this Mortgage, unless the context shall otherwise clearly require, the term "Mortgagor" shall include the heirs, representatives, successors and assigns, as the case may be, of Mortgagor and all persons claiming by, through, or under Mortgagor; the term "Mortgagor" shall include the successors and assigns, as the case may be, of Mortgagor and all persons claiming by, through, or under Mortgagor; the term "person" shall include any individual, partnership, corporation, trustee, or unincorporated association. The singular shall include the plural and the plural, the singular; the gender used shall include the other genders. The invalidity or unenforceability of any one (1) or more phrases, sentences, clauses or paragraphs of this Mortgage shall not affect the validity or enforceability of the remaining portions of this Mortgage or of any part hereof. If this Mortgage is invalid or unenforceable as to any part of the Mortgage Loan, or if this Mortgage is invalid or unenforceable as to any part of the Premises, the unsecured or partially unsecured portion of the Mortgage Loan shall be completely paid prior to the payment of the remaining secured or partially secured portion of the Loan; and all payments made on the Loan, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the Loan which is not secured or fully secured by this Mortgage.

17. All the terms, covenants, conditions and agreements herein set forth shall be binding upon and inure to the benefit of the respective heirs, executors, administrators, attorneys, representatives, successors and assigns, as the case may be, of the parties hereto.

18. No delay or omission on the part of LFUCG in exercising any right or remedy hereunder or under any other Loan Documents shall operate as a waiver of such right or remedy or any other right or remedy. A waiver by LFUCG on any one occasion shall not be a bar to or waiver of any right or remedy on any further occasion. The rights and remedies provided herein and in the other Loan Documents are cumulative, and LFUCG may resort to any other right or remedy or any combination thereof available under the other Loan Documents or at law or in equity without first exhausting and without affecting or impairing the security of or any right or remedy afforded by

this Mortgage. No waiver shall be effective as to LFUCG unless same shall be in writing by its duly authorized officer; any such waiver shall be construed strictly according to its terms.

19. Immediately upon the delivery of a written request, but subject to the terms of the Permitted Encumbrances, Mortgagor will pay or will have paid to LFUCG for the term of this Mortgage, on the same dates as payments of principal and/or interest are required to be made by Mortgagor, an amount equal to one-twelfth (1/12) of the annual premiums for insurance as may be required by LFUCG relative to the Premises, and one-twelfth (1/12) of the annual taxes and assessments assessed against the Premises. LFUCG shall hold all such sums so received for, and shall apply same to, payment of such taxes, assessments and insurance. Mortgagor shall receive no interest on any such sums received and held by LFUCG for the benefit of Mortgagor.

20. In the event of any inconsistency, in the terms and provisions of this Mortgage or any other Loan Document as to the rights and remedies of LFUCG, or in the event of any such inconsistency as between or among any two (2) or more Loan Documents, then in any such event LFUCG shall have the right at its sole option to elect which of such provisions shall govern.

21. If Mortgagor shall pay to LFUCG all sums due LFUCG under the Notes and the interest thereon, in the manner and at the times mentioned in the Notes, or otherwise in connection with the Loan, and Mortgagor shall pay LFUCG any and all other sums due from Mortgagor to LFUCG under this Mortgage and shall fully keep and perform the terms, covenants, conditions and agreements under this Mortgage or otherwise due LFUCG relative to the Loan, then this Mortgage and the estate granted thereby shall cease and be void, and this Mortgage shall thereupon be released by LFUCG at the cost and expense of Mortgagor.

22. This Mortgage may be executed by the parties in any number of counterparts, each of which shall be an original, but such counterparts together shall constitute one and the same instrument.

23. This Mortgage is taken, in part, to secure a loan made for the purpose of erecting, improving or adding to a building.

Notwithstanding any provision in any of the Loan Documents to the contrary, Lender acknowledges and agrees that (a) the Premises is or will be subject to a Land Use Restriction Agreement (as defined below), (b) the recordation of the Land Use Restriction Agreement against the Premises is permitted under the terms of the Loan Documents and (c) this Mortgage, and the terms and provision thereof, shall be subordinate to the Land Use Restriction Agreement regardless of the order of recording of either document. "Land Use Restriction Agreement" means the extended low-income housing commitment, regulatory agreement or restrictive covenants executed or to be executed by Mortgagor setting forth certain terms and conditions under which the Premises is to be operated.

Notwithstanding Lender's right to invoke any remedies Loan Documents, the Lender agrees as follows:

- a. Lender shall, upon serving Mortgagor with any notice of default pursuant to the Loan Documents, simultaneously serve a copy of such notice upon Senior Lenders identified in the Loan Agreement entered contemporaneously herewith. Such notice shall outline in detail the default(s) under the Loan Documents. Senior Lender shall thereupon have 60

days after service of such notice upon it to remedy or cause to be remedied the defaults complained of, and at the instigation of Senior Lender as if the same had been done by Mortgagor.

- b. Lender will not proceed to enforce any of its rights and remedies under the Loan Documents, including without limitation the right to accelerate the indebtedness under the Mortgage Note or initiate foreclosure proceedings to enforce the lien of this Security Instrument until it has given Senior Lender at least 60 days prior written notice as set forth above.

It is expressly understood that a default on the Senior Mortgage or any initiation of a foreclosure based on any lien shall be a default under this Mortgage and the principal amount shall immediately become due and payable and Lender shall be entitled to recover the cost of collection, including reasonable attorney fees.

The Lender consents to any agreement or arrangement in which the Senior Lender waives, postpones, extends, reduces or modifies any provisions of the Senior Mortgage including any provisions requiring the payment of money.

24. Notwithstanding the foregoing, the Mortgagor shall have no personal liability under this Mortgage, the Notes, or any other Loan Document for the payment of the indebtedness evidenced by the Notes and the performance of any other obligations of the Mortgagor under the Loan Documents (collectively, the "Indebtedness") and the Lender's only recourse for the satisfaction of the Indebtedness and the performance of such obligations shall be the Lender's exercise of its rights and remedies under the Loan Documents with respect to the Mortgaged Property.

**PROVIDED, HOWEVER,** that if Mortgagor shall pay the Mortgage Notes according to the terms thereof and perform all of the covenants, conditions, stipulations, and agreements set out in the same or herein contained, then this Mortgage shall be void, and the Lender shall, at Mortgagor's cost and request, release the same.

IN TESTIMONY WHEREOF, LFUCG and the Mortgagor have caused this instrument to be executed by LFUCG and the Mortgagor's duly authorized officers this day and date first hereinabove appearing.

THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.

**OAKDALE APARTMENTS, LLC**, a Kentucky limited liability company

By: Oakdale MM, LLC, its Managing Member

By: [Signature], Member  
Name: James L. Duff  
Title: Member

COMMONWEALTH OF KENTUCKY )  
 )  
COUNTY OF ~~FAYETTE~~ Jefferson )

Subscribed, sworn to and acknowledged before me this 28<sup>th</sup> day of June 2012, by James Duff, of Oakdale MM, LLC, as Managing Member of Oakdale Apartments, LLC, a Kentucky limited liability company, for and on behalf of said limited liability company.



My commission expires: 11/23/24

[Signature]  
Notary Public

**EXHIBIT A**

Being all of Lot 2 as shown on the Non-Building Minor Subdivision Plat of Downing Property - Parcel 2 - Lots 2 and 3 (Greendale Hills Unit 3) as it is recorded in Plat Cabinet S, Slide 278 in the office of the Fayette County Clerk.

Being a portion of the same property conveyed to Greendale Properties, LLC, a Kentucky limited liability company who took title by virtue of Deed dated January 2, 2007 and recorded January 10, 2007 in Deed Book 2700, page 110 of the Clerk's Records of Fayette County, Kentucky.

**LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT  
AFFORDABLE HOUSING FUND  
DEFERRED PROMISSORY NOTE**

**\$600,000.00**

**June 30, 2022**

FOR VALUE RECEIVED, **OAKDALE APARTMENTS, LLC**, a Kentucky limited liability company, whose principal address is 1417 Hepburn Avenue, Louisville, Ky. 40204 (the “Maker”) promises to pay to **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT** (“LFUCG”), an urban county government of the Commonwealth of Kentucky created pursuant to KRS Chapter 67A, whose address is 200 East Main Street, Lexington, Kentucky 40507, its successors and assigns, the principal sum of **SIX HUNDRED THOUSAND DOLLARS (\$600,000.00)** or so much thereof as may be advanced under the Loan Agreement (the “Agreement”) and outstanding, together with interest thereon at the rate of interest rate (0%) per annum to be computed from the earlier of August 1, 2026, or the date of the final disbursement of funds from Affordable Housing Funds.

A. Payments shall be required as follows:

1. Interest on the outstanding principal *calculated in the manner set forth below* shall be due and payable in arrears on the 1<sup>st</sup> day of each month beginning on the earlier of August 1, 2026, or the month following the date of the final draw of Affordable Housing funds and continuing on the *first* day of each succeeding month thereafter until the principal balance shall be paid in full.
2. Unless otherwise agreed to in writing, or otherwise required by applicable law, payments shall be applied first to accrued, unpaid interest, then to principal, and any remaining amount to any unpaid costs or charges, provided however, upon an Event of Default, LFUCG reserves the right to apply payments in its sole discretion.
3. Any payment due under this Note on a day which is not a business day shall be made on the succeeding business day and any resulting extension of time shall be included in the computation of the interest payment amount.
4. All interest hereunder shall be computed on the basis of a year of 360 days, and in each case shall be payable for the actual number of days elapsed.
5. Subject to Paragraph B below, the entire principal balance, together with all interest accrued and unpaid thereon and all other sums due under this Note shall be due and payable on August 1, 2040, (the “Maturity Date”)

B. Notwithstanding the foregoing, so long as Maker does not commit or participate in any event of breach or default as defined in Sections 5.1 and 5.2 of the Loan Agreement, or if such event of breach or default has occurred with cure or continues to occur with cure under the Maker’s ownership, the Maker’s obligation to pay this Deferred Loan Promissory Note shall be deferred until the Maturity Date.

If any payment required under this Note is not paid within ten (10) days after such payment is due, the undersigned will pay to LFUCG or the subsequent holder of this Note a late charge equal to five percent (5%) of the amount of such payment or Twenty-five Dollars (\$25.00), whichever is greater, up to a maximum of One Thousand Five Hundred Dollars (\$1,500.00) per late charge to compensate LFUCG for administrative expenses and other costs of delinquent payments. This late

charge may be assessed without notice, shall be immediately due and payable and shall be in addition to all other rights and remedies available to LFUCG.

This Note evidences indebtedness incurred under, and is subject to the terms and provisions of, a Commitment Letter (the "Commitment Letter") and a Loan Agreement between the undersigned and LFUCG ("Loan Agreement"), of even date herewith providing for a loan of **ONE MILLION TWO HUNDRED THOUSAND DOLLARS (\$1,200,000.00)** and this Note is expressly subject to and will be bound by the terms and conditions set forth in such Commitment and Loan Agreement as if all of such terms and conditions were expressly set forth herein. Terms used herein and not otherwise defined shall have the meaning set forth in the Loan Agreement, Mortgage and any other agreement related to the Loan (collectively, "Loan Documents").

If (1) any installment of interest or the payment of principal required by this Note remains unpaid for more than 10 days after the due date thereof, (2) the undersigned should be the subject of any voluntary or involuntary bankruptcy, receivership or other insolvency proceeding; or (3) the undersigned fails to observe or perform any of the terms of this Note; (4) there is any default by undersigned under the Loan Agreement, the Mortgage or any other document, instrument or agreement providing any security for this Note; or (5) there is any action filed to foreclose or otherwise enforce the terms of any mortgage or other loan document executed by a senior lender, then in any of those events LFUCG or the holder of this Note may declare the remaining principal balance of this Note (or so much thereof as may have been advanced) to be immediately due and payable. In the event of default under this Promissory Note, interest shall accrue on the entire unpaid balance at a rate of twelve percent (12%) per annum from the date the default is declared until the default has been cured.

Any waiver of any default hereunder or under the instruments securing this Note at any time will not, at any other time, constitute a waiver of the terms of this Note or the instruments securing it, and the acceptance of payments upon the indebtedness evidenced hereby will not constitute a waiver of the option of LFUCG or the holder of this Note to accelerate repayment of the entire unpaid balance, unless LFUCG or the holder expressly grants such waiver in writing.

This Note is also secured by and is one of the Notes mentioned in a real estate Mortgage of even date herewith executed in favor of LFUCG by the undersigned for real estate located at 1201 Greendale Road in Lexington, Kentucky, and this Note is expressly made subject to and will be bound by the terms and conditions set forth in said Mortgage as if all of such terms and conditions were expressly set forth herein. All sums which shall or may become due and payable by the Maker in accordance with the provisions of this Note shall be deemed to constitute additional interest on, and shall be evidenced by this Note, shall be secured by the Mortgage and other Loan Documents.

The undersigned and all persons now or hereafter liable, whether primarily or secondarily, for the whole or any part of the indebtedness evidenced by this Note jointly and severally:

- (a) agree to remain and continue to be responsible for the payment of the principal of and interest on this Note notwithstanding any extension or extensions of time of the payment of the principal or interest, or any change or changes by way of release or surrender of any collateral, real or personal, held as security for the payment of this Note, and waive all and every kind of notice of such extension or extensions, change or changes and agree that the same may be made without the joinder of any such persons; and

- (b) waive presentment, notice of dishonor, protest, notice of protest and diligence in collection and all exemptions, whether homestead or otherwise, to which they or any of them may now or hereafter be entitled under the laws of Kentucky or any other state; and
- (c) agree, upon default, to pay all costs of collection, securing or attempting to collect or secure this Note, including a reasonable attorney's fee, whether same be collected or secured by suit or otherwise, providing the collection of such costs and fees is permitted by applicable law.

This Note may be assigned in whole or in part by LFUCG or any other holder hereof.

The undersigned may prepay the principal amount outstanding in whole or in part at any time without penalty, after receiving the written consent of all Senior Lenders as identified and defined in the Loan Agreement.

The Maker (and the undersigned representative(s) of the Maker) represents that the Maker has full power, authority and legal right to execute and deliver this Note and that this Note constitutes a valid and binding obligation of the Maker.

This Note will be governed by and construed in accordance with the laws of the Commonwealth of Kentucky.

Neither the undersigned nor its partners shall have any personal liability under this Note or any other Loan Document for the repayment of the indebtedness evidenced by this Note or for the performance of any other obligations of the undersigned under the Loan Documents (collectively, the "Indebtedness"), and LFUCG's only recourse for the satisfaction of the Indebtedness and the performance of such obligations shall be LFUCG's exercise of its rights and remedies under the Loan Documents with respect to the Premises (as defined in the Mortgage) and any other collateral held by LFUCG as security for the Indebtedness. This limitation on the undersigned's liability shall not limit or impair LFUCG's enforcement of its rights against any indemnitor or guarantor pursuant to any agreement of indemnity or guaranty.





**LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT  
AFFORDABLE HOUSING FUND  
PROMISSORY NOTE**

**\$600,000.00**

**June 30, 2022**

FOR VALUE RECEIVED, **OAKDALE APARTMENTS, LLC**, a Kentucky limited liability limited partnership, whose principal address is 1417 Hepburn Avenue, Louisville, Ky. 40204 (the "Maker") promises to pay to **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT ("LFUCG")**, an urban county government created pursuant to KRS Chapter 67A, whose principal address is 200 East Main Street, Lexington, Kentucky 40507, its successors and assigns, the principal sum of **SIX HUNDRED THOUSAND DOLLARS (\$600,000.00)** or lesser amount as may be endorsed on this Promissory Note on behalf of LFUCG, at the rate of interest rate (0%) per annum.

A. Payments shall be required as follows:

1. This Note shall be payable to LFUCG in annual installments of available "Net Cash Flow" of the Borrower, as that term is defined in the Maker's Amended and Restated Limited Partnership Agreement dated June 30, 2022, in a sum that shall equal Twenty Thousand Dollars (\$20,000.00) ("Target Annual Payment") annually, commencing on August 1, 2026, and continuing annually on the first day of April thereafter, until paid in full. The Maker agrees to make the Target Annual Payment prior to making any annual payment of any developer fee.
2. Unless otherwise agreed to in writing, or otherwise required by applicable law, payments shall be applied first to accrued, unpaid interest, then to principal, and any remaining amount to any unpaid costs or charges, provided however, upon an Event of Default, LFUCG reserves the right to apply payments in its sole discretion.
3. Any payment due under this Note on a day which is not a business day shall be made on the succeeding business day and any resulting extension of time shall be included in the computation of the interest payment amount.
4. All interest hereunder shall be computed on the basis of a year of 360 days, and in each case shall be payable for the actual number of days elapsed.
5. The entire principal balance, together with all interest accrued and unpaid thereon and all other sums due under this Note, shall be due and payable on August 1, 2040 (the "Maturity Date").

If any payment required under this Note is not paid within ten (10) days after such payment is due, the undersigned will pay to LFUCG or the subsequent holder of this Note a late charge equal to five percent (5%) of the amount of such payment or Twenty-five Dollars (\$25.00), whichever is greater, up to a maximum of One Thousand Five Hundred Dollars (\$1,500.00) per late charge to compensate LFUCG for administrative expenses and other costs of delinquent payments. This late charge may be assessed without notice, shall be immediately due and payable and shall be in addition to all other rights and remedies available to LFUCG.

This Note evidences indebtedness incurred under, and is subject to the terms and provisions

of a Loan Agreement between the undersigned and LFUCG ("Loan Agreement"), of even date herewith, providing a loan of **ONE MILLION TWO HUNDRED THOUSAND DOLLARS (\$1,200,000.00)** and this Note is expressly subject to and will be bound by the terms and conditions set forth in such Loan Agreement as if all of such terms and conditions were expressly set forth herein. Terms used herein and not otherwise defined shall have the meaning set forth in the Loan Agreement, Mortgage and any other agreement related to the Loan (collectively, "Loan Documents").

If (1) any installment of interest or the payment of principal required by this Note remains unpaid for more than 10 days after the due date thereof, (2) the undersigned or any guarantor should be the subject of any voluntary or involuntary bankruptcy, receivership or other insolvency proceeding, (3) the undersigned fails to observe or perform any of the terms of this Note; or (4) there is a default by the undersigned under the Loan Agreement, the Mortgage or any other document, instrument or agreement providing any security for this Note, then, in any of those events, LFUCG or the holder of this Note may declare the remaining principal balance of this Note (or so much thereof as may have been advanced) to be immediately due and payable. In the event of default under this Promissory Note, interest shall accrue on the entire unpaid balance at a rate of twelve percent (12%) per annum from the date the default is declared until the default has been cured.

Any waiver of any default hereunder or under the instruments securing this Note at any time will not, at any other time, constitute a waiver of the terms of this Note or the instruments securing it, and the acceptance of payments upon the indebtedness evidenced hereby will not constitute a waiver of the option of LFUCG or the holder of this Note to accelerate repayment of the entire unpaid balance, unless LFUCG or the holder expressly grants such waiver in writing.

This Note is also secured by and is the same Note mentioned in a real estate Mortgage of even date herewith executed in favor of LFUCG by the undersigned for the real estate located at 1201 Greendale Road, Lexington, Kentucky, and this Note is expressly made subject to and will be bound by the terms and conditions set forth in said Mortgage as if all of such terms and conditions were expressly set forth herein. All sums which shall or may become due and payable by the Maker in accordance with the provisions of this Note shall be deemed to constitute additional interest on, and shall be evidenced by this Note, shall be secured by the Mortgage and the other Loan Documents.

The undersigned and all persons now or hereafter liable, whether primarily or secondarily, for the whole or any part of the indebtedness evidenced by this Note jointly and severally:

(a) agree to remain and continue to be responsible for the payment of the principal of and interest on this Note notwithstanding any extension or extensions of time of the payment of the principal or interest, or any change or changes by way of release or surrender of any collateral, real or personal, held as security for the payment of this Note, and waive all and every kind of notice of such extension or extensions, change or changes and agree that the same may be made without the joinder of any such persons;

(b) waive presentment, notice of dishonor, protest, notice of protest and diligence in collection and all exemptions, whether homestead or otherwise, to which they or any of them may now or hereafter be entitled under the laws of Kentucky or any other state; and

(c) agree, upon default, to pay all costs of collection, securing or attempting to collect or secure this Note, including a reasonable attorney's fee, whether same be collected or secured by

suit or otherwise, providing the collection of such costs and fees is permitted by applicable law.

This Note may be assigned in whole or in part by LFUCG or any other holder hereof.

The undersigned may prepay the principal amount outstanding in whole or in part at any time without penalty, only after receiving the written consent of all Senior Lenders as identified and defined in the Loan Agreement.

The Maker (and the undersigned representative(s) of the Maker) represents that the Maker has full power, authority and legal right to execute and deliver this Note and that this Note constitutes a valid and binding obligation of the Maker.

This Note will be governed by and construed in accordance with the laws of the Commonwealth of Kentucky.

Neither the undersigned nor its partners shall have any personal liability under this Note or any other Loan Document for the repayment of the indebtedness evidenced by this Note or for the performance of any other obligations of the undersigned under the Loan Documents (collectively, the "Indebtedness"), and LFUCG's only recourse for the satisfaction of the Indebtedness and the performance of such obligations shall be LFUCG's exercise of its rights and remedies under the Loan Documents with respect to the Premises (as defined in the Mortgage) and any other collateral held by LFUCG as security for the Indebtedness. This limitation on the undersigned's liability shall not limit or impair LFUCG's enforcement of its rights against any indemnitor or guarantor pursuant to any agreement of indemnity or guaranty.



**LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT  
AFFORDABLE HOUSING FUND  
FORGIVABLE LOAN PROMISSORY NOTE**

**\$800,000.00**

**June 30, 2022**

FOR VALUE RECEIVED, **OAKDALE APARTMENTS, LLC**, a Kentucky limited liability company, whose principal address is 1417 Hepburn Avenue, Louisville, Ky. 40204 (the "Maker") promises to pay to **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT ("LFUCG")**, an urban county government of the Commonwealth of Kentucky created pursuant to KRS Chapter 67A, whose address is 200 East Main Street, Lexington, Kentucky 40507, its successors and assigns, the principal sum of EIGHT HUNDRED THOUSAND DOLLARS (**\$800,000.00**) or so much thereof as may be advanced under the Loan Agreement (the "Agreement") and outstanding, together with interest thereon at the rate of interest rate (0%) per annum to be computed from the earlier of August 1, 2026 or the date of the final disbursement of funds from Affordable Housing Funds.

A. Payments shall be required as follows:

1. Interest on the outstanding principal *calculated in the manner set forth below* shall be due and payable in arrears on the 1<sup>st</sup> day of each month beginning on the earlier of August 1, 2026 or the month following the date of the final draw of Affordable Housing funds and continuing on the *first* day of each succeeding month thereafter until the principal balance shall be paid in full.
2. Unless otherwise agreed to in writing, or otherwise required by applicable law, payments shall be applied first to accrued, unpaid interest, then to principal, and any remaining amount to any unpaid costs or charges, provided however, upon an Event of Default, LFUCG reserves the right to apply payments in its sole discretion.
3. Any payment due under this Note on a day which is not a business day shall be made on the succeeding business day and any resulting extension of time shall be included in the computation of the interest payment amount.
4. All interest hereunder shall be computed on the basis of a year of 360 days, and in each case shall be payable for the actual number of days elapsed.
5. Subject to Paragraph B below, the entire principal balance, together with all interest accrued and unpaid thereon and all other sums due under this Note shall be due and payable on December 31, 2026, (the "Maturity Date")

B. However, so long as Maker does not commit or participate in any event of breach or default as defined in Sections 5.1 and 5.2 of the Loan Agreement, and if such event of breach or default has occurred without cure or continues to occur without cure under the Maker's ownership, the Maker's obligation to pay this Forgivable Loan Promissory Note shall be forgiven. The entire principal sum shall be forgiven in full on December 31, 2026, as long as there exists no event which would cause the recapture of the ARPA (as defined in the Loan Agreement) funds.

If any payment required under this Note is not paid within ten (10) days after such payment is due, the undersigned will pay to LFUCG or the subsequent holder of this Note a late charge equal

to five percent (5%) of the amount of such payment or Twenty-five Dollars (\$25.00), whichever is greater, up to a maximum of One Thousand Five Hundred Dollars (\$1,500.00) per late charge to compensate LFUCG for administrative expenses and other costs of delinquent payments. This late charge may be assessed without notice, shall be immediately due and payable and shall be in addition to all other rights and remedies available to LFUCG.

This Note evidences indebtedness incurred under, and is subject to the terms and provisions of, a Commitment Letter (the "Commitment Letter") dated June 21, 2022 and a Loan Agreement between the undersigned and LFUCG ("Loan Agreement"), of even date herewith providing for a loan of EIGHT HUNDRED THOUSAND DOLLARS (\$800,000.00) and this Note is expressly subject to and will be bound by the terms and conditions set forth in such Commitment and Loan Agreement as if all of such terms and conditions were expressly set forth herein. Terms used herein and not otherwise defined shall have the meaning set forth in the Loan Agreement, Mortgage and any other agreement related to the Loan (collectively, "Loan Documents").

If (1) any installment of interest or the payment of principal required by this Note remains unpaid for more than 10 days after the due date thereof, (2) the undersigned or any guarantor should be the subject of any voluntary or involuntary bankruptcy, receivership or other insolvency proceeding; or (3) the undersigned fails to observe or perform any of the terms of this Note; (4) there is any default by undersigned under the Loan Agreement, the Mortgage or any other document, instrument or agreement providing any security for this Note; or (5) there is any action filed to foreclose or otherwise enforce the terms of any mortgage or other loan document executed by a senior lender, then in any of those events LFUCG or the holder of this Note may declare the remaining principal balance of this Note (or so much thereof as may have been advanced) to be immediately due and payable. In the event of default under this Promissory Note, interest shall accrue on the entire unpaid balance at a rate of twelve percent (12%) per annum from the date the default is declared until the default has been cured.

Any waiver of any default hereunder or under the instruments securing this Note at any time will not, at any other time, constitute a waiver of the terms of this Note or the instruments securing it, and the acceptance of payments upon the indebtedness evidenced hereby will not constitute a waiver of the option of LFUCG or the holder of this Note to accelerate repayment of the entire unpaid balance, unless LFUCG or the holder expressly grants such waiver in writing.

This Note is also secured by and is the same Note mentioned in a real estate Mortgage of even date herewith executed in favor of LFUCG by the undersigned for real estate located at 1201 Greendale Road in Lexington, Kentucky, and this Note is expressly made subject to and will be bound by the terms and conditions set forth in said Mortgage as if all of such terms and conditions were expressly set forth herein. All sums which shall or may become due and payable by the Maker in accordance with the provisions of this Note shall be deemed to constitute additional interest on, and shall be evidenced by this Note, shall be secured by the Mortgage and other Loan Documents.

The undersigned and all persons now or hereafter liable, whether primarily or secondarily, for the whole or any part of the indebtedness evidenced by this Note jointly and severally:

- (a) agree to remain and continue to be responsible for the payment of the principal of and

interest on this Note notwithstanding any extension or extensions of time of the payment of the principal or interest, or any change or changes by way of release or surrender of any collateral, real or personal, held as security for the payment of this Note, and waive all and every kind of notice of such extension or extensions, change or changes and agree that the same may be made without the joinder of any such persons; and

- (b) waive presentment, notice of dishonor, protest, notice of protest and diligence in collection and all exemptions, whether homestead or otherwise, to which they or any of them may now or hereafter be entitled under the laws of Kentucky or any other state; and
- (c) agree, upon default, to pay all costs of collection, securing or attempting to collect or secure this Note, including a reasonable attorney's fee, whether same be collected or secured by suit or otherwise, providing the collection of such costs and fees is permitted by applicable law.

This Note may be assigned in whole or in part by LFUCG or any other holder hereof.

The undersigned may prepay the principal amount outstanding in whole or in part at any time without penalty.

The Maker (and the undersigned representative(s) of the Maker) represents that the Maker has full power, authority and legal right to execute and deliver this Note and that this Note constitutes a valid and binding obligation of the Maker.

This Note will be governed by and construed in accordance with the laws of the Commonwealth of Kentucky.

The undersigned shall have no personal liability under this Note or any other Loan Document for the repayment of the indebtedness evidenced by this Note or for the performance of any other obligations of the undersigned under the Loan Documents (collectively, the "Indebtedness"), and LFUCG's only recourse for the satisfaction of the Indebtedness and the performance of such obligations shall be LFUCG's exercise of its rights and remedies under the Agreement. This limitation on the undersigned's liability shall not limit or impair LFUCG's enforcement of its rights against any indemnitor or guarantor pursuant to any agreement of indemnity or guaranty. Notwithstanding the foregoing provisions, the undersigned shall be fully and personally liable for damages to LFUCG resulting from (i) the undersigned's fraud or misrepresentation, whether affirmative or by omission; (ii) the misapplication of (a) proceeds of insurance covering any portion of the Premises, or (b) proceeds of condemnation of any portion of the Premises or proceeds from the sale or conveyance of any portion of the Premises in lieu of condemnation; (iii) the amount of any loss caused by the undersigned's failure to comply with any hazardous substance laws described in Paragraph 2.3 of the Agreement, such loss to include expenses, clean-up costs, penalties and damages incurred by the undersigned and any resulting diminution in the fair market value of the Premises caused by the undersigned or agents; and (iv) all reasonable costs and expenses including court costs and reasonable attorney's fees incurred in collecting any of the foregoing.



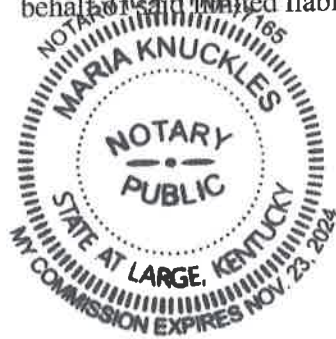
**OAKDALE APARTMENTS, LLC, a Kentucky limited liability company**

By: Oakdale MM, LLC, its Managing Member

By: [Signature], member  
Name: James L. Duffy  
Title: Member

COMMONWEALTH OF KENTUCKY )  
COUNTY OF ~~FAYETTE~~ JEFFERSON )

Subscribed, sworn to and acknowledged before me this 28<sup>th</sup> day of June 2022, by James Duffy, of Oakdale MM, LLC, as Managing Member of Oakdale Apartments, LLC, a Kentucky limited liability company, for and on behalf of said limited liability company.



My commission expires: 11/23/24  
[Signature]  
Notary Public

THIS INSTRUMENT WAS PREPARED BY:

[Signature]  
Brittany Griffin Smith  
Attorney  
Lexington-Fayette Urban County Government  
200 East Main Street  
Lexington, Kentucky 40507  
(859) 258-3500

**LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT  
AFFORDABLE HOUSING FUND  
LOAN AGREEMENT**

**THIS LOAN AGREEMENT** ("Agreement") is made and entered into this 30<sup>th</sup> day of June 2022, by and between **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government created pursuant to KRS Chapter 67A, whose principal address is 200 East Main Street, Lexington, Kentucky 40507 (hereinafter referred to as "LFUCG") through its **OFFICE OF AFFORDABLE HOUSING**, and **OAKDALE APARTMENTS, LLC**, a Kentucky limited liability company, whose principal address is 1417 Hepburn Avenue, Louisville, Ky. 40204 (hereinafter referred to as the "Borrower").

**WITNESSETH:**

**WHEREAS**, pursuant to Chapter 2, Article XXXXV, Section 2-482 of the Lexington-Fayette Urban County Code of Ordinances ("the Code"), the Affordable Housing Fund ("the Fund") was created to preserve, produce, and provide safe, quality, and affordable housing; and

**WHEREAS**, pursuant to Chapter 2, Article XXXXV, Section 2-479 of the Code, the Affordable Housing Governing Board oversees and manages the administration of the Fund; and

**WHEREAS**, the Lexington Fayette Urban County Government has also made federal grant funds, awarded pursuant to the American Rescue Plan Act of 2021 ("ARPA"), available through the Fund for projects approved by the Affordable Housing Governing Board; and

**WHEREAS**, the development of housing to increase the supply of affordable and high-quality living units is an eligible use of ARPA funds; and

**WHEREAS**, Borrower requested has received approval for funds for a specific housing related project described below (hereinafter referred to as the "Eligible Activity"); and

**WHEREAS**, in order to assist Borrower in the funding of the Eligible Activity, LFUCG is willing to make funds available to Borrower from the Fund under the terms and conditions of this Agreement and the terms of its Commitment Letter, dated June 21, 2022 (hereinafter referred to as the "Commitment") attached hereto and incorporated herein as Exhibit A; and

**WHEREAS**, the project for which Borrower has been approved requires acquisition of property.

**NOW, THEREFORE**, the parties do hereby agree as follows:

**Article 1 - Commitment**

**1.1 LFUCG'S COMMITMENT.** Pursuant to this Agreement, LFUCG will make available an amount of ARPA funds not to exceed **EIGHT HUNDRED THOUSAND DOLLARS (\$800,000.00)** ("AHF ARPA Loan") to Borrower from the Fund. Borrower understands that this AHF ARPA Loan is funded with money awarded to LFUCG under ARPA and further understands that the use of the AHF ARPA Loan is governed by any and all terms and conditions provided in applicable federal law. Affordable Housing Funds will be disbursed by LFUCG to Borrower in accordance with the requirements set forth in this Agreement and in the Commitment, conditioned upon Borrower's continued satisfactory performance under the terms of this Agreement. The AHF ARPA Loan will be made available in the form of a forgivable loan,

which shall accrue interest at the rate of zero percent (0%) per annum. The AHF ARPA Loan will be evidenced by one or more promissory notes (“Notes”) in form and substance satisfactory to LFUCG payable to LFUCG and signed by Borrower. Principal and interest (if any) of the AHF ARPA Loan shall be amortized in equal, consecutive installments of principal and accrued but unpaid interest, commencing as set forth in the Notes and continuing until principal and interest have been paid in full. All unpaid principal and accrued interest shall be forgiven December 31, 2026 (“Maturity Date”). The AHF ARPA Loan will be expended only for the purpose of acquisition of the Property (defined below) described in the mortgage(s) executed pursuant to Section 1.2 below and in conformity with the other provisions of this Agreement and the Commitment.

Borrower also acknowledges that, pursuant to ARPA, Funds provided pursuant to this Agreement shall be spent on or before December 31, 2026 (“ARPA Deadline”), unless in the case of reallocation made by the U.S. Treasury to LFUCG. Reallocation of funds by the U.S. Treasury to LFUCG does not guaranty reallocation of funds to the Borrower. Any funds not expended must be returned. The Borrower understands that the failure to spend all the Funds committed in this Agreement on or before the ARPA Deadline is an Event of Default, and said Event of Default may also give LFUCG grounds to immediately terminate this Agreement and pursue any and all available remedies specified within this Agreement or any other document executed contemporaneously herewith. Borrower also understands and agrees that any amount of the Funds that were committed in this Agreement but not expended on or before the ARPA Deadline shall be returned to LFUCG no later than thirty (30) days after the ARPA Deadline.

**1.2 MORTGAGE; OTHER SECURITY.** The performance of the Borrower’s obligations under this Agreement shall be secured by a mortgage lien, or mortgage liens, in favor of LFUCG in the total principal amount of the AHF ARPA Loan in form and substance satisfactory to LFUCG. In the sole discretion of LFUCG, the performance of Borrower’s obligations under this Agreement may also be secured by an Assignment of Leases and Rents, Security Agreement, UCC-1 Financing Statement, Fixture Filing, and such other documents as LFUCG may in its sole discretion require (collectively, the mortgage(s) and the other security documents described in this subsection are referred to as the “Security Documents,” the terms and conditions of which are incorporated herein).

**1.3 ELIGIBLE ACTIVITY.** The AHF ARPA Loan has been made available based upon the information provided by Borrower in its Application dated August 12, 2021. The sole purpose of this allocation is to acquire land located at 1201 Greendale Road (“Project” or “Property”).

**1.4 SITES.** In the event the Project includes new construction activities, Borrower must identify specific units (the “Units”) to be assisted. Once identified, Units may not be changed, removed or substituted without prior written approval of LFUCG.

**1.5 MONITORING.** LFUCG shall monitor the Borrower as necessary and in accordance with regulations on Monitoring and Management, 2 CFR 200.330 – 2 CFR 200.332, to ensure Borrower complies with all of the requirements of this Agreement, including the timeframes and performance goals associated with the activities. Substandard performance, as determined by LFUCG, will constitute noncompliance with this Agreement. If action to correct such substandard performance is not taken by the Borrower within 30 days after being notified by LFUCG, then

LFUCG may impose additional conditions on the Borrower and its use of funds consistent with 2 CFR 200.207, suspend or terminate this Agreement, or initiate other remedies for noncompliance as appropriate and permitted under 2 CFR 200.338.

**ARTICLE 2 - REPRESENTATIONS AND WARRANTIES OF BORROWER**

**2.1** Borrower represents and warrants that:

(a) The Property will be free and clear of all encumbrances, except for that Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Financing Statement (“**Senior Mortgage**”) issued by Borrower in favor of Cedar Rapids Bank and Trust Company (“**Senior Lender**”) related to a construction-to-permanent loan in the amount of **\$15,930,000.00**, and that certain Swap Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Financing Statement (“**Swap Mortgage**” and hereafter, with the Senior Mortgage, the “**Permitted Encumbrance**”) and clear of easements, restrictions, stipulations and rights-of-way of record, applicable zoning rules and regulations and taxes which may be due and payable or which have been assessed and become a lien against the property whether or not yet due and payable. The AHF ARPA Loan shall be in all respects subordinate to the Permitted Encumbrance.

(b) All funds disbursed hereunder will be used only for acquisition expenses, as applicable, of the Property, as approved by LFUCG, and said funds will not be used in any other manner or for any other purpose; and

(c) The acquisition has been approved by the appropriate local, regional and state agencies, including those concerned with planning and zoning, public works and health.

**2.2** Borrower understands and acknowledges that projects assisted with LFUCG Funds must, at a minimum, meet the requirements set out in this Agreement. Borrower will supply, at LFUCG's request, all necessary documentation to substantiate compliance with this paragraph.

**2.3** Borrower represents and warrants that, at the time any advances are made by LFUCG as provided herein, the Property will contain no substance known to be hazardous such as hazardous waste, lead-based paint (in violation of Federal or State law), asbestos, methane gas, urea formaldehyde, insulation, oil, toxic substances, polychlorinated biphenyls (PCBs) or radon, and Borrower shall take all action necessary to insure that the Property contains no such substances. Further, the Property will not be affected by the presence of oil, toxic substances or other pollutants that could be a detriment to the Property, nor is Borrower or the Property in violation of any local, state or federal environmental law or regulation and no violation of the Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act, Toxic Substance Control Act, Safe Drinking Water Control Act, Comprehensive Environmental Resource Compensation and Liability Act or Occupational Safety and Health Act has occurred or is continuing. Borrower will take all actions within its control necessary to insure that no such violation occurs. Borrower will immediately deliver to LFUCG any notice it may receive about the existence of any of the foregoing hazardous conditions on the Property or about a violation of any such local, state or federal law or regulation with respect to the Property.

**2.4** Borrower is duly organized and validly existing and in good standing under the laws of the Commonwealth of Kentucky; has the power and authority, corporate or otherwise, to own its properties and carry on its business as being conducted; and is duly qualified to do business

wherever qualification is required. Borrower has been organized pursuant to state law for the primary purpose of providing housing to persons and families of lower and moderate income. Borrower is not presently under any cease or desist order or other orders of a similar nature, temporary or permanent, of any federal or state authority which would have the effect of preventing or hindering the performance of its duties under this Agreement, nor are there any proceedings presently in progress or to its knowledge contemplated which would, if successful, lead to the issuance of any cease or desist order.

**2.5** Plans and specifications for the Project are satisfactory to Borrower and, to the extent required by applicable law, have been approved by all governmental agencies and authorities having jurisdiction thereof, and the use of the Project site(s) contemplated hereby will comply with all local zoning requirements.

**2.6** There are no actions, suits or proceedings pending or, to the knowledge of the Borrower, threatened against or affecting it or the Project or involving the validity or enforceability of any mortgage or the priority of the mortgage lien granted by or to Borrower, at law or in equity, on or before or by any governmental authority or any other matters which would substantially impair the ability of Borrower to pay when due any amounts which may become payable in respect to the Notes, and to the Borrower's knowledge, it is not in default with respect to any order, writ, judgment, injunction, decree or demand of any court of any governmental authority.

**2.7** The consummation of the transaction contemplated hereby and the performance of this Agreement and any Mortgage, if so required, will not result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, bank loan or other loan, credit agreement, corporate charter, bylaw or any other instrument to which the Borrower is a party or by which it may be bound or affected.

### **ARTICLE 3 – REQUIREMENTS FOR DISBURSEMENT**

**3.1** **DISBURSEMENT OF AFFORDABLE HOUSING FUNDS.** The AHF ARPA Loan will be disbursed to Borrower upon receipt by LFUCG of the following:

- (a) an executed original of the Authorized Signature form; and
- (b) evidence that the Project will remain affordable as provided below;
- (c) an executed LFUCG Construction Start-Up Form;
- (d) execution of the Notes, recordation of a valid mortgage lien against the Property securing repayment of the AHF ARPA Loan, recordation of a Declaration of Covenants and Restrictions.

LFUCG will not be required to advance any amount hereunder if an Event of Default (hereinafter defined) has occurred and is continuing.

**3.2** **DISBURSEMENT OF DEVELOPER FEE.** If a Developer fee is paid with the AHF ARPA Loan proceeds, it will be disbursed on a pro-rata share equal to the percent of the Project completion, with the exception of the initial draw as follows:

- (a) up to 40% of the Project's developer fee may be disbursed at the initial draw;
- and
- (b) the remaining 60% may be drawn based upon the percentage of construction completion.

Developer fee shall be used to cover all funding shortfalls before additional funds can be requested. LFUCG will continue to hold the ten percent (10%) retainage until all project completion and closeout documents are received.

**3.3 AFFORDABILITY PERIOD.** The Property must remain affordable to persons at or below eighty percent (80%) of the area median income pursuant to the guidelines of the United States Department of Housing and Urban Development (HUD) for a minimum of fifteen (15) years from the date the AHF ARPA Loan proceeds are first expended on the Project. Affordability must be ensured by recorded deed restrictions for all properties receiving Affordable Housing Funds. Only LFUCG, or its successors and assigns, has the right to release the deed restrictions prior to the date on which the restrictions expire.

**3.4 SECTION 8 RENTAL ASSISTANCE.** If AHF ARPA Loan proceeds are used to construct rental property, Borrower will not refuse to lease any Unit assisted with Affordable Housing Funds to a holder of a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937, as amended, solely because of the status of the prospective tenant as a holder of a certificate or voucher. Provided, however, if the rent required for the Unit is based upon a percentage of the prospective tenant's income through project design, or the assisted housing unit(s) utilize project-based rental housing assistance through another source, this section will not apply. This section does not apply to homeowner-occupied units of housing assisted with Affordable Housing Funds.

**3.5 INSURANCE.** For all properties assisted with Affordable Housing Funds, the Borrower or Property Owner must maintain all risk, fire and extended coverage, in form and with companies acceptable to LFUCG, for each Unit of the Project and any improvements to be constructed thereon in an amount of not less than the Affordable Housing Funds made available to Borrower for each Unit of the Project. This insurance is specific to the Property and is in addition to the Borrower's insurance requirements specified within this Agreement. Each policy must include appropriate loss payable clauses in favor of LFUCG or Borrower, as applicable, as beneficiary and without right of cancellation or change except upon thirty (30) days' written notice to LFUCG. Borrower will deliver proof of all insurance to LFUCG upon request.

**3.6 REPAYMENT.** In the event that repayment of the Affordable Housing Funds is required, Borrower agrees to repay funds to the Fund through LFUCG on a timely basis.

**3.7 LEGAL MATTERS.** All legal matters incident to the contemplated transaction will be concluded to the satisfaction of LFUCG's Department of Law.

**3.8 PROOF OF CORPORATE ACTION.** Prior to execution of this Agreement, LFUCG shall have received (i) copies of Borrower's organizational documents; (ii) confirmation from the Secretary of State of Borrower's organizational jurisdiction that Borrower is a validly existing entity in good standing, and (iii) a resolution from the Borrower's Board of Directors, member, manager or general partner, as appropriate, authorizing the execution of the legal documents evidencing the funding received under this Agreement. If Borrower is a foreign entity, it shall, in addition to jurisdictional organizational documents provide evidence of its authority to conduct business in the Commonwealth of Kentucky.

#### **ARTICLE 4 - CONSTRUCTION LOAN TERMS**

**4.1 PLANS AND SPECIFICATIONS.** Borrower will develop the Property in accordance with plans and specifications which have been approved by LFUCG, or by any other agency approved by LFUCG, which plans and specifications, upon such approval, will be incorporated herein by reference. Said plans and specifications will include and specifically identify all roads, sewer lines and water lines and will provide for the development of the Property in conformance with applicable Affordable Housing Program requirements. Said plans and specifications may be subject to minor changes as required to comply with state and local building codes and to conform to the Property, provided such changes are approved by LFUCG. In addition to said plans and specifications, Borrower will prepare or cause to be prepared from time to time such additional plans and drawings, including working drawings, shop drawings and supplemental specifications, as may be necessary or desirable to facilitate expeditious construction of the improvements in accordance with the approved plans and specifications and will cause copies of all such additional items to be delivered to LFUCG. All of said plans and specifications and any such additional items so approved are hereinafter collectively referred to as the "Plans and Specifications." Borrower will not deviate nor permit any such deviation from the Plans and Specifications without the prior written consent of LFUCG.

**4.2 NO LIENS.** Borrower will cause all work to be performed, including all labor, materials, supervision, supplies, equipment, architectural, and engineering services necessary to complete the improvements, in accordance with the Plans and Specifications. The Borrower will complete the improvements free from all materialmen's liens and all mechanic's liens and claims. All contracts with subcontractors and materialmen will contain, upon the request of LFUCG, a provision for not less than ten percent (10%) retainage to ensure adequate and complete performance in connection with interim or progress payments hereunder. Advances of the Affordable Housing Funds by LFUCG will not be made until a representative of LFUCG has inspected the improvements, certified their completion and received from the general contractor and all subcontractors' affidavits, in form and substance satisfactory to LFUCG, stating that payment will constitute payment in full of all amounts due and owing to them and their suppliers.

**4.3 DEADLINE ON PROPERTY DEVELOPMENT.** Borrower will begin development of the Property within 30 days after an advance is made hereunder for the Property and will cause all development work to be pursued with diligence and without delay. Borrower will cause the improvements to be constructed in a good and workmanlike manner in substantial compliance with the Plans and Specifications and in all respects in full compliance with all laws, rules, permits, requirements and regulations of any governmental agency or authorities having jurisdiction over the Property.

**4.4 USE OF FUNDS.** Borrower will cause all Affordable Housing Funds borrowed or advanced pursuant hereto to be applied entirely and exclusively for the acquisition or development, as applicable, of the Property and payment of labor and materials in the completion of development work in substantial compliance with the Plans and Specifications and for the payment of such other costs incidental thereto as may be specifically approved in writing by LFUCG. Borrower further understands and agrees that the use of these Funds shall be governed by federal statutes, regulations, and interpretive guidance issued by federal agencies, including the U.S. Department of the Treasury. Borrower shall comply with each and every federal law that governs the use of these Funds.

**4.5 RIGHT OF INSPECTION.** Borrower will permit access by LFUCG to the books and

records of Borrower and to the Property and all improvements at reasonable times. In the event LFUCG determines that any work or materials are not substantially in conformance with the Plans and Specifications, or are not in conformance with any applicable laws, regulations, permits, requirements or rules of any governmental authority having or exercising jurisdiction thereover or are not otherwise in conformity with sound building practices, LFUCG may stop the work and order replacement or correction of any such work or materials. Such inspection will not be construed as a representation or warranty by LFUCG to any third party that the improvements are, or will be, free of faulty materials or workmanship.

**4.6 UNDERTAKING.** If required by LFUCG prior to disbursement of Affordable Housing Funds hereunder and thereafter as LFUCG may require, Borrower will deliver to LFUCG (a) an agreement between Borrower and the architect who has prepared the Plans and Specifications whereby such architect agrees that the agreement is assignable to LFUCG upon the same terms and conditions as exist in said agreement; (b) an agreement between Borrower and Borrower's contractor whereby Borrower's contractor agrees that the agreement is assignable to LFUCG upon the same terms and conditions as exist in said agreement; (c) copies of all subcontracts and material purchase orders between Borrower's contractor and any persons, firms, or corporations with whom it has contracted to provide labor, materials or services with respect to the construction of the improvements, where any such contract exceeds a minimum price of Five Thousand Dollars (\$5,000.00); and (d) if requested in writing by LFUCG, a list of all persons, firms and corporations who have provided or proposed to provide labor, materials or services in connection with construction of the improvements.

**4.7 NONLIABILITY OF LFUCG.** This Agreement will not be construed to make LFUCG liable to materialmen, contractors, craftsmen, laborers or others for goods and services delivered by them to or upon the Property or for debts or claims accruing to said parties against the Borrower. There are no contractual relationships, either express or implied, between LFUCG and any materialman, contractors, craftsmen, laborers or any other persons supplying work, labor or materials on the job, nor will any third person or persons, individual or corporate, be deemed to be beneficiaries of this Agreement or any term, condition or provisions hereof or on account of any actions taken or omitted by LFUCG pursuant hereto.

#### **ARTICLE 5 – BREACH OR DEFAULT**

**5.1 RECAPTURE OF FUNDS; BREACH OF AGREEMENT.** In the event of a breach of this Agreement, LFUCG may seek recoupment of the Funds by giving thirty (30) days' written notice to Borrower, except where specified in Paragraph 5.5 of this Agreement. After providing the aforementioned written notice, LFUCG has the right, in its sole discretion, to recapture any portion of Affordable Housing Funds not yet spent and/or require repayment of Affordable Housing Funds already spent upon the occurrence of one or more of the following events ("Breach"):

(a) Borrower does not diligently pursue the activity for which Affordable Housing Funds have been awarded;

(b) Borrower violates of any of the terms of this Agreement, the Affordable Housing Program ordinances, any federal law governing the use of these Funds, the Notes evidencing the Affordable Housing Funds under this Agreement, the Declaration of Covenants and Restrictions, or any other Security Document entered into pursuant to this Agreement;

(c) Borrower does not submit reports or submits inadequate reports pursuant to



Article 6 below;

(d) Borrower defaults under any of the terms of this Agreement or any other document executed in conjunction with funding under this Agreement, and such default is not cured within any applicable cure period;

(e) Borrower is unable to draw all Affordable Housing Funds, as set forth in the closing documents, in no instance later than twenty-four (24) months from the date of this Agreement;

(f) Borrower is unable to document its participation in the project throughout the compliance period as required of nonprofit material participation per IRC Section 42;

(g) the information submitted to LFUCG by Borrower, upon which LFUCG relied in its decision to allocate funds to Borrower, proves to be untrue or incorrect in any material respect; or

(h) LFUCG determines in its sole discretion that it would be inadvisable to disburse Affordable Housing Funds to Borrower because of a material and adverse change in Borrower's condition.

**5.2 EVENTS OF DEFAULT.** Occurrence of one or more of the following events will, in the sole discretion of LFUCG, constitute an event of default:

(a) Any installment of principal or interest required by the Notes remains unpaid for more than ten (10) days after the due date thereof;

(b) Any representation or warranty made herein, or in any certificate, report or statement furnished to LFUCG in connection the Affordable Housing Funds or the Notes proves to have been untrue or misleading in any material respect when made and such failure will cause a recapture of the Affordable Housing Funds;

(c) Failure of Borrower to perform any of the provisions of the Notes, Mortgage, this Agreement or any other document executed in connection with this Agreement;

(d) Borrowers violation of the affordability requirements, whether evidenced by recorded deed restriction or owner certification of continued compliance;

(e) The entry of any lien or encumbrance against the Project site(s), (other than liens or encumbrances evidencing loan proceeds for the Permitted Encumbrances), except for ad valorem taxes which are not yet due and payable and easements and/or liens incurred in the ordinary course of business with respect to amounts which are not yet due and payable without penalty or interest;

(f) Borrower fails to prosecute Project site development work with diligence so that construction thereof will be completed in a timely manner;

(g) Any party obtains or seeks an order or decree in any court of competent jurisdiction seeking to enjoin the construction of the improvements or to delay construction of the same or to enjoin or prohibit Borrower or LFUCG from carrying out the terms and conditions hereof, and such proceedings are not discontinued or such decree is not vacated within thirty (30) days after LFUCG has given Borrower notice under the provisions hereof;

(h) Borrower discontinues the acquisition and/or construction work and

abandonment continues for a period of ten (10) days;

(i) Borrower permits cancellation or termination of any insurance policy required under this Agreement or fails, if required, to obtain any renewal or replacement thereof satisfactory to LFUCG;

(j) Borrower (A) becomes bankrupt, or ceases, becomes unable, or admits in writing its inability to pay its debts as they mature, or makes a general assignment for the benefit of, or enters into any composition or arrangement with, creditors; (B) applies for, or consents (by admission of material allegations of a petition or otherwise) to the appointment of a trustee, receiver or liquidator of the Borrower or of a substantial portion of its assets, or authorizes such application or consent, or proceedings seeking such appointment are commenced without such authorization, consent or application against it and continue un-dismissed and unstayed for a period of fifteen (15) days; (C) authorizes or files a voluntary petition in bankruptcy, reorganization, readjustment of debt, insolvency, dissolution, liquidation or other similar law of any jurisdiction; or authorizes such application or consent; or proceedings to such end are instituted against the Borrower without such authorization, application or consent and are approved as properly instituted, remain undismissed for fifteen (15) days, or result in adjudication of bankruptcy or insolvency; or

(k) Borrower is found to have violated any law or regulation, whether federal or state; or

(l) Any action is filed to foreclose on the Property; or

(m) Borrower fails to comply with any applicable federal law that governs the use of these Funds; or

(n) Borrower fails to spend the Funds committed in this Agreement on or before the ARPA Deadline.

**5.3 CURE OF BREACH OR DEFAULT; PENALTIES.** If any breach or default is not cured within thirty (30) days from the date LFUCG notifies Borrower and Borrower's managing member ("Managing Member") of the breach or default in writing, LFUCG may continue suspension of disbursements. However, any managing member of the Borrower shall have the right, but not the obligation, to cure any default on the same terms and conditions as Borrower, and such cure shall be accepted or rejected by LFUCG, as if such cure was made by Borrower. Additionally, LFUCG may declare the loan and/or grant immediately due and payable and may institute proceedings for its collection. LFUCG may terminate this Agreement by giving written notice to Borrower. In the event of a termination, Borrower's authority to draw Affordable Housing Funds will terminate as of the date of the notice of termination and Borrower will have no right, title or interest in or to any remaining Affordable Housing Funds. The Borrower's investor member ("Investor Member") and Senior Lender shall have the right to cure any Event of Default existing under the Loan Documents which right must be exercised by the later of (a) the cure period provided in the Loan Documents, or (b) 15 days after receipt of written notice of default by the Investor Member. For the Investor Member to effectively exercise its cure rights, the Investor Member must fully pay the amount past due or perform the defaulted obligations, including the payment of any amounts due for legal expenses incurred in connection with the default. Notwithstanding anything to the contrary in the Loan Documents, upon the occurrence of an Event of Default arising out of: (i) the bankruptcy, insolvency or assignment of assets for the benefit of creditors by the Managing

Member, or (ii) the withdrawal from Borrower of the Managing Member, or the death or incapacity of the Managing Member, or (iii) a breach of the representations concerning such Managing Member, the Investor Member shall have the option, but not the obligation, within 45 days of receipt of written notice of such Event of Default from LFUCG, to cure any such default by appointing a substitute or additional managing member that is an affiliate of the Investor Member to act as such managing member.

**5.4 MISAPPROPRIATION OF FUNDS.** Borrower will be liable for any and all misappropriation of Affordable Housing Funds, audit exceptions by state or federal agencies, and violations of the terms of this Agreement. LFUCG also has the right to require Borrower to repay to LFUCG a portion of or all Affordable Housing Funds drawn by Borrower in cases of breach involving a material misrepresentation in any document furnished to LFUCG in connection with the Borrower's request for Funds, misappropriation of funds, or fraudulent uses of funds.

**5.5 RIGHTS UPON DEFAULT.** If one or more of the Events of Default described above occur, LFUCG may declare Borrower to be in default under this Agreement by giving not less than then thirty (30) days prior written notice (or other notice required by applicable default provisions in other LFUCG loan documents) to Borrower, except for a default in payment, in which case no notice is required, and thereafter, LFUCG may exercise any one or more of the following remedies:

- (a) Terminate the credit hereby extended, declare the entire unpaid balance and all accrued but unpaid interest under the Notes due and payable and institute proceedings for collection thereof; provided, however, LFUCG may make advances under the occurrence of an event of default without waiving any of its rights hereunder;
- (b) Exercise its rights under the Notes or any other Security Document;
- (c) Enter upon the Project site(s), expel and eject Borrower and all persons claiming through or under Borrower and collect the rents and profits therefrom;
- (d) Have discharged of record any mechanic's and materialmen's lien or other lien against the Project site(s);
- (e) Institute such legal proceedings or other proceedings in the name of Borrower or LFUCG as LFUCG may deem appropriate for the purpose of protecting the Project site(s) and LFUCG's interests therein; or
- (f) Do and perform all acts and deeds in the name of Borrower or LFUCG as LFUCG deems necessary or desirable to protect the Project site(s) and LFUCG's interests therein.
- (g) All of the rights and remedies of LFUCG under this Agreement shall be cumulative and to the fullest extent permitted by law and shall be in addition to all those rights and remedies afforded LFUCG at law or in equity or in bankruptcy.

**5.6 PAYMENTS DUE TO DEFAULT.** Borrower shall reimburse and fully compensate LFUCG upon demand for all loss, damage and expense, including without limitation reasonable attorney's fees and court costs, together with interest on the amount thereof from the date the same accrues at the rate of twelve percent (12%) per annum, incurred by LFUCG (a) by reason of any default or defaults hereunder or under this Agreement, the Notes, or the Security Documents or any other loan document executed by Borrower, (b) by reason of the neglect by Borrower of any duty or undertaking hereunder or under the Security Documents and (c) in the exercise of any right

or remedy hereunder or under the Security Documents.

**5.7 TRANSFERS OF INTERESTS.** Notwithstanding anything to the contrary herein, any transfers or pledges of membership interests in the Borrower (including the removal of the managing member) are expressly permitted and shall not constitute a default hereunder.

#### **ARTICLE 6 – RECORDS; REPORTING**

**6.1 RECORDS; ACCESS.** Borrower agrees to comply with any reporting obligations established by the U.S. Department of Treasury, including the Treasury Office of Inspector General, as relates to this subaward, including but not limited to: (i) reporting of information to be used by the Treasury to comply with its public reporting obligations under ARPA; (ii) any reporting of information to be used by the Treasury to comply with its public reporting obligations under Section 501 of the Consolidated Appropriations Act of 2021 (hereinafter “Section 501”); and (iii) any reporting to Treasury and the Pandemic Response Accountability Committee that may be required pursuant to Section 15011(b)(2) of Division B of the Coronavirus Aid, Relief, and Economic Security Act (Pub. L. No. 116-136), as amended by Section 801 of Division O of the Consolidated Appropriations Act, 2021 (Pub. L. No. 116-260). Borrower acknowledges that any such information required to be reported pursuant to this section may be publicly disclosed. Borrower further agrees to provide LFUCG or its designee access to all of its books and records, including fiscal records, for the purpose of program assessment reviews, and to retain all books and records until the later of five (5) years from the termination of all activities funded under this Agreement, or until all audits of performance during the term of this Agreement have been completed. Notwithstanding the above, if there is litigation, claims, audits, negotiations or other actions that involve any of the records cited and that have started before the expiration of the five-year period, then such records must be retained until completion of the actions and resolution of all issues, or the expiration of the five -year period, whichever occurs later. Borrower agrees to maintain its books and records in accordance with generally accepted accounting principles. Nothing in this Agreement will be construed to limit the ability of LFUCG to monitor implementation of the project funded by this Agreement.

**6.2 RECORDS TO BE MAINTAINED.** The Borrower shall maintain all records documenting its compliance with ARPA, its accompanying regulations, and any and all interpretive guidance issued by the U.S Treasury. The Borrower shall also maintain records showing how the Borrower prevented Duplication of Benefits, as defined by Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5155) and in accordance with Section 1210 of the Disaster Recovery Reform Act of 2018 (division D of Public Law 115–254; 132 Stat. 3442), which amended section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5155). The Borrower further agrees to maintain all records identified herein and in any addendum to this Agreement, in accordance with all terms and conditions stated herein, for any expenses that the Borrower paid using funds provided under the Agreement:

1. Any and all records specified in this Agreement or in any other loan document;
2. Any and all documents specifically requested by LFUCG.

### **6.3 AUDITS, INSPECTIONS AND MONITORING**

A. If the Funds provided in this Agreement equal or exceed \$750,000.00, or if the Borrower identified in this Agreement receives an aggregate of \$750,000.00 from the Affordable Housing Governing Board throughout the year in which this Agreement was executed, then the following requirements shall apply:

#### **1. Single Audit**

The Borrower must be audited as required by 2 CFR part 200, subpart F when it is expected that the Borrower's federal awards expended during the respective fiscal year equaled or exceeded the threshold set forth in §200.501 Audit requirements.

The Borrower shall submit a copy of the audit report to the federal Audit Clearinghouse within 30 days after receipt of the audit report, but not later than nine months after the end of the audit period. Concurrently with the submission of the audit report to the federal Audit Clearinghouse, the Borrower shall submit a copy of the audit report to the LFUCG's Division of Grants and Special Programs. Any deficiencies noted in audit reports must be fully cleared by the Borrower within 30 days after receipt by the Borrower. Failure of the Borrower to comply with the above audit requirements will constitute a violation of this Agreement and may result in the withholding of future payments.

#### **2. Inspections and Monitoring**

All of Borrower's records with respect to any matters covered by this Agreement shall be made available to LFUCG, their designees, or the federal government, at any time during normal business hours, as often as LFUCG, their designees, or the federal government deems necessary, to audit, examine, and make excerpts or transcripts of all relevant data to meet the requirements of 2 CFR part 200. The Borrower must submit to monitoring of its activities by LFUCG as necessary to ensure that the subaward is used for authorized purposes, in compliance with federal statutes, regulations, and the terms and conditions of this Agreement.

**6.4 ACCESS TO RECORDS.** The Borrower shall furnish and cause each of its own subcontractors to furnish all information and reports required hereunder and will permit access to its books, records and accounts by LFUCG, the U.S. Department of Treasury or its agent, or other authorized federal officials for purposes of investigation to ascertain compliance with the rules, regulations and provisions stated herein.

**6.5 REPORTING REQUIREMENTS.** In the event project activity reports are required, reports must be submitted as requested by LFUCG, on the forms provided by LFUCG, beginning the first calendar quarter after Borrower receives a disbursement of Affordable Housing Funds.

**6.6 ANNUAL FINANCIAL REPORTING.** Borrower agrees to provide LFUCG or its designee audited financials and/or Financial Compilation Reports on an annual basis during the

term of this Agreement.

**6.7 WARRANTY AS TO INFORMATION.** Borrower acknowledges that its award of Affordable Housing Funds has been based upon information received from Borrower. Borrower warrants that the financial and other information furnished by Borrower to LFUCG was, at the time of application, and continues to be, true and accurate.

**6.8 PROGRAM COMPLIANCE.** Borrower agrees to comply with the LFUCG Affordable Housing Program guidelines and criteria relating to the Fund.

### **ARTICLE 7 – UNIFORM ADMINISTRATIVE REQUIREMENTS**

**7.1** The Borrower shall comply with the applicable provisions in 2 CFR part 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR part 200. These provisions include:

A. Financial & Program Management

The Borrower shall expend and account for all funds received under this Agreement in accordance with 2 CFR part 200, including 2 CFR part 200, subpart D, which covers Standards for Financial and Program Management and agrees to adhere to the accounting principles and procedures required therein, use adequate internal controls, and maintain necessary source documentation for all costs incurred.

B. Cost Principles

Costs incurred, whether charged on a direct or an indirect basis, must be in conformance with 2 CFR part 200, subpart E. All items of cost listed in 2 CFR part 200, subpart E, that require prior federal agency approval are allowable without prior approval of LFUCG to the extent they comply with the general policies and principles stated in 2 CFR part 200, subpart E and are otherwise eligible under this Agreement.

### **ARTICLE 8 – ADHERENCE TO FEDERAL, STATE, AND LOCAL LAWS AND REGULATIONS**

**8.1 GENERAL.** The Borrower understands that it is responsible for reviewing all applicable federal laws and regulations, as well as any guidance issued by any federal agency, and agrees that it shall comply with the requirements of ARPA, Treasury interpretive guidance, and all other applicable federal statutes, regulations, and executive orders. The Borrower shall also provide for such compliance in any agreements it enters with other parties relating to this subaward.

Federal regulations applicable to this subaward include, without limitation, the following:

- Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 CFR Part 200, other than such provisions as Treasury may determine are inapplicable to this subaward and subject to such exceptions as may

be otherwise provided by Treasury. Subpart F – Audit Requirements of the Uniform Guidance, implementing the Single Audit Act, shall apply to this award.

- Universal Identifier and System for Award Management (SAM), 2 C.F.R. Part 25 and pursuant to which the award term set forth in Appendix A to 2 C.F.R. Part 25 is hereby incorporated by reference.
- Reporting Subaward and Executive Compensation Information, 2 C.F.R. Part 170, pursuant to which the subaward term set forth in Appendix A to 2 C.F.R. Part 170 is hereby incorporated by reference.
- OMB Guidelines to Agencies on Governmentwide Debarment and Suspension (Nonprocurement), 2 C.F.R. Part 180 (including the requirement to include a term or condition in all lower tier covered transactions (contracts and subcontracts) described in 2 C.F.R. Part 180, subpart B) that the award is subject to 2 C.F.R. Part 180 and Treasury’s implementing regulation at 31 C.F.R. Part 19.
- Recipient Integrity and Performance Matters, pursuant to which the award term set forth in 2 C.F.R. Part 200, Appendix XII to Part 200 is hereby incorporated by reference.
- Governmentwide Requirements for Drug-Free Workplace, 31 C.F.R. Part 20.
- New Restrictions on Lobbying, 31 C.F.R. Part 21.
- Fair Housing Act (Title VIII of the Civil Rights Act of 1968);
- 24 CFR § 5.105, which prohibits discrimination on the basis of actual or perceived sexual orientation or gender identity, and marital status
- Title VI of the Civil Rights Act of 1964;
- Section 504 of the Rehabilitation Act of 1973;
- Section 109 of Title I of the Housing and Community Development Act of 1974;
- Title II of the Americans with Disabilities Act of 1990;
- Architectural Barriers Act of 1968;
- Age Discrimination Act of 1975;
- Title IX of the Education Amendments Act of 1972; and
- Presidential Executive Orders 11063, 11246, 12892, 12898, 13166, 13217.
- Chapter 2, Article XLV, of the Lexington-Fayette Urban County Code of Ordinances.

**8.2 ECONOMIC OPPORTUNITIES.** The Borrower shall ensure that employment and other economic opportunities generated by the Program shall, to the greatest extent feasible, be directed to low- and very low-income persons, particularly those who are recipients of government assistance for housing. Section 3 of the Housing and Urban Development Act of 1968, 12 U.S.C. § 1701u, as amended by the Housing and Community Development Act of 1992, final rule requirements for CDBG, CDBG-CV, CDBG-DR, CDBG-MIT, NSP, Section 108, and RHP projects, and regulations at 24 CFR part 135, shall apply, except that homeless individuals have priority over other Section 3 residents in accordance with § 576.405(c).

**8.3 ASSURANCES OF COMPLIANCE WITH TITLE VI.** As a condition of receipt of this federal financial assistance from the Department of the Treasury, the Borrower provides the assurances stated herein. The federal financial assistance may include federal grants, loans and contracts to provide assistance to the Borrower’s beneficiaries, the use or rent of Federal land or

property at below market value, Federal training, a loan of Federal personnel, subsidies, and other arrangements with the intention of providing assistance. Federal financial assistance does not encompass contracts of guarantee or insurance, regulated programs, licenses, procurement contracts by the Federal government at market value, or programs that provide direct benefits.

The assurances apply to all federal financial assistance from or funds made available through the Department of the Treasury, including any assistance that the Borrower may request in the future. The Civil Rights Restoration Act of 1987 provides that the provisions of the assurances apply to all of the operations of the Borrower's program(s) and activity(ies), so long as any portion of the Borrower's program(s) or activity(ies) is federally assisted in the manner prescribed above.

1. Borrower ensures its current and future compliance with Title VI of the Civil Rights Act of 1964, as amended, which prohibits exclusion from participation, denial of the benefits of, or subjection to discrimination under programs and activities receiving federal financial assistance, of any person in the United States on the ground of race, color, or national origin (42 U.S.C. § 2000d *et seq.*), as implemented by the Department of the Treasury Title VI regulations at 31 CFR Part 22 and other pertinent executive orders such as Executive Order 13166, directives, circulars, policies, memoranda, and/or guidance documents.

2. Borrower acknowledges that Executive Order 13166, "Improving Access to Services for Persons with Limited English Proficiency," seeks to improve access to federally assisted programs and activities for individuals who, because of national origin, have Limited English proficiency (LEP). Borrower understands that denying a person access to its programs, services, and activities because of LEP is a form of national origin discrimination prohibited under Title VI of the Civil Rights Act of 1964 and the Department of the Treasury's implementing regulations. Accordingly, Borrower shall initiate reasonable steps, or comply with the Department of the Treasury's directives, to ensure that LEP persons have meaningful access to its programs, services, and activities. Borrower understands and agrees that meaningful access may entail providing language assistance services, including oral interpretation and written translation where necessary, to ensure effective communication in the Borrower's programs, services, and activities.

3. Borrower agrees to consider the need for language services for LEP persons when Recipient develops applicable budgets and conducts programs, services, and activities. As a resource, the Department of the Treasury has published its LEP guidance at 70 FR 6067. For more information on taking reasonable steps to provide meaningful access for LEP persons, please visit <http://www.lep.gov>.

4. Borrower acknowledges and agrees that compliance with the assurances constitutes a condition of continued receipt of federal financial assistance and is binding upon Borrower and Borrower's successors, transferees, and assignees for the period in which such assistance is provided.

5. Borrower acknowledges and agrees that it must require any sub-grantees, contractors, subcontractors, successors, transferees, and assignees to comply with assurances 1-4 above, and agrees to incorporate the following language in every contract or agreement subject to Title VI and its regulations between the Borrower and the Borrower's



contractors, subcontractors, successors, transferees, and assignees: *The contractor, subcontractor, successor, transferee, and assignee shall comply with Title VI of the Civil Rights Act of 1964, which prohibits recipients of federal financial assistance from excluding from a program or activity, denying benefits of, or otherwise discriminating against a person on the basis of race, color, or national origin (42 U.S.C. § 2000d et seq.), as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, which are herein incorporated by reference and made a part of this contract (or agreement). Title VI also includes protection to persons with "Limited English Proficiency" in any program or activity receiving federal financial assistance, 42 U.S.C. § 2000d et seq., as implemented by the Department of the Treasury's Title VI regulations, 31 CFR Part 22, and herein incorporated by reference and made a part of this contract or agreement.*

6. Borrower understands and agrees that if any real property or structure is provided or improved with the aid of federal financial assistance by the Department of the Treasury, this assurance obligates the Borrower, or in the case of a subsequent transfer, the transferee, for the period during which the real property or structure is used for a purpose for which the federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is provided, this assurance obligates the Borrower for the period during which it retains ownership or possession of the property.

7. Borrower shall cooperate in any enforcement or compliance review activities by the Department of the Treasury of the aforementioned obligations. Enforcement may include investigation, arbitration, mediation, litigation, and monitoring of any settlement agreements that may result from these actions. The Borrower shall comply with information requests, on-site compliance reviews and reporting requirements.

8. Borrower shall maintain a complaint log and inform the Department of the Treasury of any complaints of discrimination on the grounds of race, color, or national origin, and limited English proficiency covered by Title VI of the Civil Rights Act of 1964 and implementing regulations and provide, upon request, a list of all such reviews or proceedings based on the complaint, pending or completed, including outcome. Borrower also must inform the Department of the Treasury if Borrower has received no complaints under Title VI.

9. Borrower must provide documentation of an administrative agency's or court's findings of non-compliance of Title VI and efforts to address the non-compliance, including any voluntary compliance or other agreements between the Borrower and the administrative agency that made the finding. If the Borrower settles a case or matter alleging such discrimination, the Borrower must provide documentation of the settlement. If Borrower has not been the subject of any court or administrative agency finding of discrimination, please so state.

10. If the Borrower makes sub-awards to other agencies or other entities, the Borrower is responsible for ensuring that sub-recipients also comply with Title VI and other applicable authorities covered in this document State agencies that make sub-awards must have in

place standard grant assurances and review procedures to demonstrate that that they are effectively monitoring the civil rights compliance of sub-recipients.

The Borrower understands and agrees that the United States of America has the right to seek judicial enforcement of the terms of this assurances document and nothing in this document alters or limits the federal enforcement measures that the United States may take in order to address violations of this document or applicable federal law.

Under penalty of perjury, the Borrower certifies that its authorized official(s) has read and understood the Borrower's obligations as herein described, that any information submitted in conjunction with this assurances document is accurate and complete, and that the Borrower is in compliance with the aforementioned nondiscrimination requirements.

**8.4 CIVIL RIGHTS, NONDISCRIMINATION AND EQUAL OPPORTUNITY IN PARTICIPATION.** The Borrower agrees to comply with Title VI of the Civil Rights Act of 1964, as amended, Title VIII of the Civil Rights Act of 1968, as amended, Section 109 of the Title I of the Housing and Community Development Act of 1974, Section 504 of the Rehabilitation Act of 1973, the Americans with Disabilities Act of 1990, and the Age Discrimination Act of 1975, and 41 CFR Chapter 60, including 41 CFR § 60-1.4. The requirements in 24 CFR part 5, subpart A are applicable, including the nondiscrimination and equal opportunity requirements at 24 CFR § 5.105(a). The Borrower shall not discriminate against any participant on the ground of race, color, creed, religion, sex, age, handicap, disability, ancestry, national origin, marital status, familial status, sexual orientation, or any other basis prohibited by applicable law. The Borrower shall, through affirmative outreach, make known that use of the facilities, assistance, and services are available to all on a nondiscriminatory basis. The Borrower must take appropriate steps to ensure effective communication with persons with disabilities.

**8.5 NONDISCRIMINATION AND EQUAL EMPLOYMENT OPPORTUNITY.** During the performance under this Agreement, the Borrower shall not discriminate against any employee or applicant for employment based on race, color, creed, religion, sex, age, handicap, disability, ancestry, national origin, marital status, familial status, sexual orientation, or any other basis prohibited by applicable law. The Borrower shall take affirmative action to ensure that all applicants and employees are treated without regard to race, color, creed, religion, sex, age, handicap, disability, ancestry, national origin, marital status, familial status, and sexual orientation. The Borrower shall comply with all provisions of Executive Order 11246, Equal Employment Opportunity, as amended by Executive Orders 11375 and 12086. The Borrower will, in all solicitations or advertisements for employees placed or on behalf of the Borrower, state that it is an Equal Opportunity or Affirmative Action employer.

**8.6 AMERICANS WITH DISABILITIES ACT.** The Borrower agrees to comply with any federal regulations issued pursuant to compliance with the Americans with Disabilities, Act which prohibits discrimination and ensures equal opportunity for persons with disabilities in employment, State and Local government services, and public accommodations.

**8.7 CONTRACT WORK HOURS AND SAFETY STANDARDS ACT.** If the Borrower's activities discussed this Agreement will involve the employment of mechanics or laborers, then

the Borrower agrees to comply with 40 U.S.C. § 3702 and § 3704.

**8.8 CLEAN AIR ACT AND FEDERAL POLLUTION CONTROL ACT.** The Borrower agrees that all activities carried out pursuant to this Agreement shall comply with the Clean Air Act (42 U.S.C. § 7401) and the Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387). The Borrower also agrees that it shall report any violations to LFUCG and to the Environmental Protection Agency.

**8.9 RIGHTS TO INVENTIONS MADE UNDER A FUNDING AGREEMENT.** The Borrower agrees to comply with all requirements stated in 37 CFR Part 401, to the extent applicable.

**8.10 HATCH ACT.** The Borrower agrees that no funds provided, nor personnel employed under this Agreement, shall be in any way or to any extent engaged in the conduct of political activities in violation of the Hatch Act, 5 U.S.C §§ 1501 et seq.

**8.11 LABOR AND EMPLOYMENT RESTRICTIONS.** The Borrower agrees to comply with the Copeland Anti- Kick Back Act (18 U.S.C. § 874) and its implementing regulations of the U.S. Department of Labor at 29 CFR part 3 and part 5. The Borrower shall maintain documentation that demonstrates compliance with applicable hour and wage requirements. Such documentation shall be made available to the Borrower for review upon request. The Borrower further agrees to comply with the applicable provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), and the applicable provisions of the Fair Labor Standards Act of 1938, as amended (29 U.S.C. et seq.). The Borrower further agrees that it will report all suspected or reported violations of any of the laws identified in this paragraph to LFUCG.

**8.12 CONFLICT OF INTEREST.** The Borrower shall comply with 2 CFR 200.112 with respect to the use of program funds to procure services, equipment, supplies, or other property. With respect to all other decisions involving the use of program funds, the following restriction shall apply: No person who is an employee, agent, consultant, officer, or elected or appointed official of the Borrower and who exercises or has exercised any functions or responsibilities with respect to assisted activities, or who is in a position to participate in a decision making process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest in any contract, subcontract, or agreement with respect thereto, or the proceeds there under, either for himself or herself, or for those with who he or she has family or business ties, during his or her tenure or for one (1) year thereafter. All contractors of the Borrower must comply with the same requirements that apply to the Borrower under this section.

**8.13 LOBBYING**

The Borrower hereby certifies that:

1. No federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the

making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement;

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;
3. It will require that the language of paragraph (d) of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly; and
4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

**8.14 RELIGIOUS ACTIVITIES.** The Borrower agrees that funds provided under this Agreement will not be used for religious activities, to promote religious interests, or for the benefit of a religious organization in accordance with the federal regulations specified in 24 CFR 570.200(j).

**8.15 DRUG FREE WORKPLACE.** The Borrower shall administer a policy designed to ensure that the facilities providing services under the terms of this Agreement are free from the illegal use, possession, or distribution of drugs or alcohol by its employees and beneficiaries.

**8.16 INSURANCE & BONDING.** The Borrower shall comply with the bonding and insurance requirements of 24 CFR 200.325 and 24 CFR 200.310.

**8.17 FFATA.** The SUBRECIPIENT shall comply with the requirements of 2 CFR part 25 Universal Identifier and System for Award Management (SAM). The SUBRECIPIENT must have an active registration in SAM in accordance with 2 CFR part 25, appendix A, and must have a Data Universal Numbering System (DUNS) number. The SUBRECIPIENT must also comply with provisions of the Federal Funding Accountability and Transparency Act, which includes requirements on executive compensation, and 2 CFR part 170 Reporting Subaward and Executive Compensation Information.

**8.18 WHISTLEBLOWER.** In accordance with 41 U.S.C. § 4712, the Borrower may not discharge, demote, otherwise discriminate against an employee as a reprisal for disclosing information to any of the list of persons or entities provided below that the employee reasonably believes is evidence of gross mismanagement of a federal contract or grant, a gross waste of federal funds, an abuse of authority relating to a federal contract or grant, a substantial and specific danger to public health or safety, or a violation of law, rule, or regulation related to a federal contract

(including the competition for or negotiation of a contract) or grant. The Borrower shall inform its employees in writing of the rights and remedies provided under this section, in the predominant native language of the workforce. The persons and entities referenced in this paragraph include:

- A member of Congress or a representative of a committee of Congress;
- An inspector General;
- The Government Accountability Office;
- A Treasury employee responsible for contract or grant oversight or management;
- An authorized official of the Department of Justice or other law enforcement agency;
- A court or grand jury; and/or
- A management official or other employee of the Borrower, contractor, or subcontractor who has the responsibility to investigate, discover, or address misconduct.

**8.19 DUPLICATION OF BENEFITS.** The Borrower agrees that the funds provided under this Agreement are intended to supplement, not supplant any other form of federal assistance. The Borrower agrees that it shall develop and maintain adequate procedures to prevent a duplication of benefits to assess whether the funds received under this Agreement duplicate any other federal benefit. The Borrower agrees that it shall develop and maintain adequate procedures to ensure that all assistance the Borrower provides using funding under this Agreement shall not exceed any person's total need.

The Borrower further agrees that it shall maintain records showing how the Borrower prevented Duplication of Benefits, as defined by Section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5155) and in accordance with Section 1210 of the Disaster Recovery Reform Act of 2018 (division D of Public Law 115-254; 132 Stat. 3442), which amended section 312 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. § 5155).

If the Borrower at any time uses funds provided under this Agreement in any manner that results in a duplication of any other federal benefit, it shall repay to LFUCG an amount equal to the amount of funds it received under this Agreement that were used in duplication of any other federal benefit.

**8.20. MISCELLANEOUS.** Pursuant to Executive Order 13043, 62 FR 19217 (April 8, 1997), the Borrower should encourage its contractors to adopt and enforce on-the-job seat belt policies and programs for their employees when operating company-owned, rented or personally owned vehicles.

Pursuant to Executive Order 13513, the Borrower should encourage its employees, subrecipients, and contractors to adopt and enforce policies that ban text messaging while driving, and should establish workplace safety policies to decrease accidents caused by distracted drivers.

## **ARTICLE 9 - MISCELLANEOUS**

**9.1 GENERAL PROGRAM CONDITIONS.** The Borrower agrees that the following conditions apply to the Funds specified in this Agreement:

- A. The Borrower agrees to use Funds available under this Agreement to supplement rather than supplant funds otherwise available.
- B. LFUCG may designate such persons as may be necessary to monitor and evaluate the services rendered by the Borrower. LFUCG, its agents and employees, shall, at all times, have unrestricted access to all places where or in which the services required hereunder are being carried on and conducted. Inspection and monitoring of the work by these authorities shall in no manner be presumed to relieve in any degree the responsibility or obligations of Borrower, or to constitute Borrower as an agent of LFUCG.
- C. Borrower understands that false statements or claims made in connection with this subaward may result in fines, imprisonment, debarment from participating in federal awards or contracts, and/or any other remedy available by law.
- D. Borrower agrees that to the greatest extent practicable, it will prefer the purchase, acquisition, and use of goods, products or materials produced in the United States.
- E. Any publications produced with funds from this subaward must display the following language: "This project [is being] [was] supported, in whole or in part, by federal award number \_\_\_\_\_ awarded to the Lexington Fayette-Urban County Government by the U.S. Department of Treasury."
- F. It is understood and agreed by the parties that Borrower hereby assumes the entire responsibility and liability for any and all damages to persons or property caused by or resulting from or arising out of any act or omission on the part of Borrower or its employees, agents, servants, owners, principals, licensees, assigns or subcontractors of any tier under or in connection with this agreement and/or the provision of goods or services and the performance or failure to perform any work required thereby.

**9.2 NOTICES.** Any notice required or permitted to be given pursuant to this Agreement will be deemed to have been duly given when properly addressed and hand-delivered, or mailed by registered or certified mail with postage prepaid, to Borrower, Senior Lender, or LFUCG, as the case may be, at the following addresses or to such other place as any of the parties may for themselves designate in writing from time to time for the purpose of receiving notices pursuant hereto:

Borrower: Oakdale Apartments, LLC  
 807 Farmingham Road  
 Louisville, Ky 40243  
 Attn: James Duffy

Senior Lender: Cedar Rapids Bank and Trust Company  
 501 First Avenue NE, Suite 100  
 Cedar Rapids, Iowa 52401  
 Attention: Sam D. Kramer

LFUCG: Lexington-Fayette Urban County Government  
200 East Main Street, Sixth Floor  
Lexington, Kentucky 40507  
ATTN: Richard McQuady, Affordable Housing Manager

If LFUCG is required under the terms of the Loan Documents to send a notice to the Borrower, LFUCG shall concurrently send a copy of such notice to the Investor Member at:

AHP Housing Fund 301, LLC  
1314 Douglas Street, Suite 1400  
Omaha, NE 68102-1944  
Attention: Legal Notices  
Email: notices@berkahp.com

**9.3 COSTS TO BE PAID BY BORROWER.** All items which Borrower agrees to furnish under this Agreement will be furnished at Borrower's sole cost and expense.

**9.4 SUSPENSION AND DEBARMENT.** Borrower certifies by submission of its application and execution of this Agreement that to the best of its knowledge and belief after reasonable investigation, that it and/or its principals are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any transaction under this Agreement by any federal department or agency, or under LFUCG's Suspension and Debarment Policy. Borrower further agrees that any future principal will meet the requirements of this section.

**9.5 INDEMNIFICATION.** The Borrower shall indemnify, save, hold harmless and defend LFUCG and its elected and appointed officials, employees, agents, volunteers, and successors in interest from and against all liability, damages, and losses, including but not limited to, demands, claims, liens, suits, notices of violation from Governmental agencies, obligations, causes of action, judgments, penalties, fines, liens, costs, expenses, interest, defense costs and reasonable attorney's fees that are in any way incidental to or connected with, or that arise or are alleged to have arisen, directly or indirectly, from or by Borrower's performance or breach of the agreement and/or the provision of goods or services provided that: (a) it is attributable to personal injury, bodily injury, sickness, or death, or to injury to or destruction of property (including the loss of use resulting therefrom), or to or from the negligent acts, errors or omissions or willful misconduct of the Borrower; and (b) not caused solely by the active negligence or willful misconduct of LFUCG. The parties understand and agree that Borrower's obligation to defend LFUCG includes the obligation to investigate, handle, respond to, resist, provide a defense for, and defend claims, at Borrower's expense, using attorneys approved in writing by LFUCG, which approval shall not be unreasonably withheld. The parties also understand and agree that Borrower's obligation to indemnify includes, but is not limited to: attorney fees and expenses; costs of litigation; court and administrative costs; expert witness fees and expenses, judgments; fines; penalties; interest; all environmental cleanups and remediation costs of whatever kind; and any liability arising from death, injury, or damage of any kind, to any person, including employees and agents of Borrower

and LFUCG, and damage to, or destruction of, any property, including the property of LFUCG.

- A. These provisions shall in no way be limited by any financial responsibility or insurance requirements, and shall survive the termination of this agreement.
- B. LFUCG is a political subdivision of the Commonwealth of Kentucky. Borrower acknowledges and agrees that LFUCG is unable to provide indemnity or otherwise save, hold harmless, or defend the Borrower in any manner.
- C. Borrower understands and agrees that it shall demonstrate the ability to assure compliance with the above indemnity provisions and other risk management provisions prior to final acceptance of its proposal and the commencement of any work or the provision of services.
- D. Borrower shall procure and maintain for the duration of this Agreement the following or equivalent insurance policies at no less than the limits shown below and cause its subcontractors to maintain similar insurance with limits acceptable to LFUCG in order to protect LFUCG against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work or services hereunder by the Borrower. The cost of such insurance shall be included in any bid:

<u>a. Coverage</u>	<u>Limits</u>
b. General Liability	\$1 million per occurrence, \$2 million aggregate
c. (Insurance Services Office Form CG 00 01)	(or \$2 million combined single limit)
d. Worker's Compensation	Statutory
e. Employer's Liability	\$1 million
f. The policies above shall contain the following conditions:	

- E. All Certificates of Insurance forms used by the insurance carrier shall be properly filed and approved by the Department of Insurance for the Commonwealth of Kentucky (DOI). LFUCG shall be named as an additional insured in the General Liability Policy using the Kentucky DOI approved forms.
- F. The General Liability Policy shall be primary to any insurance or self-insurance retained by LFUCG.
- G. The General Liability Policy shall include Premises and Operations coverage unless it is deemed not to apply by LFUCG.
- H. The General Liability Policy shall include Employment Practices Liability coverage or an endorsement in a minimum amount of \$1 million unless it is deemed not to apply by



LFUCG.

- I. LFUCG shall be provided at least 30 days advance written notice via certified mail, return receipt requested, in the event any of the required policies are canceled or non-renewed.
- J. Said coverage shall be written by insurers acceptable to LFUCG and shall be in a form acceptable to LFUCG. Insurance placed with insurers with a rating classification of no less than Excellent (A or A-) and a financial size category of no less than VIII, as defined by the most current Best's Key Rating Guide shall be deemed automatically acceptable.
  - a. After insurance has been approved by LFUCG, evidence of renewal of an expiring policy must be submitted to LFUCG, and may be submitted on a manually signed renewal endorsement form. If the policy or carrier has changed, however, new evidence of coverage must be submitted in accordance with these Insurance Requirements.
  - b. Self-insurance programs, deductibles, and self-insured retentions in insurance policies are subject to separate approval by LFUCG's Division of Risk Management, upon review of evidence of Borrower's financial capacity to respond to claims. Any such programs or retentions must provide Borrower with at least the same protection from liability and defense of suits as would be afforded by first-dollar insurance coverage. If Borrower satisfies any portion of the insurance requirements through deductibles, self-insurance programs, or self-insured retentions, Borrower agrees to provide LFUCG's Division of Risk Management, the following data prior to the final acceptance of bid and the commencement of any work:
    - i. Latest audited financial statement, including auditor's notes.
    - ii. Any records of any self-insured trust fund plan or policy and related accounting statements.
    - iii. Actuarial funding reports or retained losses.
    - iv. Risk Management Manual or a description of the self-insurance and risk management program.
    - v. A claim loss run summary for the previous five (5) years.
    - vi. Self-Insured Associations will be considered.
- K. Borrower agrees to furnish LFUCG with all applicable Certificates of Insurance signed by a person authorized by the insurer to bind coverage on its behalf prior to final award, and if requested, shall provide LFUCG copies of all insurance policies, including all endorsements. Borrower understands and agrees that LFUCG may review, audit and inspect any and all of its records and operations to insure compliance with these Insurance Requirements.
- L. Borrower shall comply with all applicable federal, state, and local safety standards related to the performance of its works or services under this Agreement and take necessary action to protect the life, health and safety and property of all of its personnel on the job site, the public, and LFUCG.

Borrower understands and agrees that the failure to comply with any provision of this Agreement regarding indemnification, insurance, safety, or loss control shall constitute a material breach of this Agreement and that LFUCG may elect at its option any remedy or penalty or any combination of remedies and penalties, as available, including but not limited to purchasing insurance and charging Borrower for any such insurance premiums purchased, or suspending or terminating the work.

**9.6 GOVERNING LAW.** This Agreement and the loan referred to herein will be governed by the laws of the Commonwealth of Kentucky.

**9.7 ASSIGNABILITY.** Borrower may not assign this Agreement nor any part hereof without the prior written consent of LFUCG. Subject to the foregoing restriction, this Agreement will inure to the benefit of LFUCG, its successors and assigns and will bind Borrower, Borrower's successors, assigns and representatives.

**9.8 MODIFICATION.** No variance or modification of this Agreement will be valid and enforceable except by supplemental agreement in writing, executed and approved in the same manner as this Agreement.

**9.9 EXHIBITS.** Any exhibits attached to this Agreement and the matters contained therein are incorporated herein and deemed to be a part hereof as if fully recited in this Agreement prior to the date of execution hereof.

**9.10 WAIVER.** LFUCG may waive Borrower's performance of any of the terms of this Agreement or Borrower's default hereunder; provided, however, such waiver must be in writing, signed by LFUCG, and any such written waiver hereunder will not be construed as a waiver of any other term or condition of this Agreement or of any act of continuing default.

**9.11 INVALID PROVISIONS.** The invalidity or unenforceability of a particular provision of this Agreement will not affect the other provisions hereof, and this Agreement will be construed in all respects as if such invalid or unenforceable provisions were omitted.

**9.12 COUNTERPARTS.** This Agreement may be executed by the parties in any number of counterparts, each of which shall be an original, but such counterparts together shall constitute one and the same instrument.

**9.13 ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties for the use of funds received under this Agreement and it supersedes all prior or contemporaneous communications and proposals, whether electronic, oral, or written between the parties relating to LFUCG's allocation of funding to Borrower.

**9.14 HEADERS.** All headings in this Agreement are for convenience of reference only and are not intended to qualify the meaning of any provision of this Agreement.

**9.15 ARPA.** The Borrower expressly acknowledges and agrees that expenditures of these funds will be in accordance with all pertinent regulations and interpretive guidance issued now or in the future by agencies of the federal government, and will be in accordance with any and all relevant provisions of ARPA, any regulations enacted pursuant to that Act, and any interpretive guidance issued by the U.S. Treasury.

WITNESS the signatures of the parties hereto as of the date and year first above written.

**LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**

By: *Linda Gorton*  
Linda Gorton, Mayor

ATTEST:

*Alla*  
Clerk, Urban County Council

**OAKDALE APARTMENTS, LLC**  
a Kentucky limited liability company

By: Oakdale MM, LLC, its Managing Member

By: [Signature]  
Name: James Duffy  
Title: Member

COMMONWEALTH OF KENTUCKY )  
COUNTY OF ~~FAYETTE~~ Jefferson )

Subscribed, sworn to and acknowledged before me this 28<sup>th</sup> day of June 2012, by James Duffy, by and on behalf of Oakdale MM, LLC, as managing member of Oakdale Apartments, LLC, a Kentucky limited liability company.

My commission expires: 11/23/24

[Signature]  
Notary Public



**LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT  
AFFORDABLE HOUSING FUND  
LOAN AGREEMENT**

**THIS LOAN AGREEMENT** ("Agreement") is made and entered into this 30<sup>th</sup> day of June 2022, by and between **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government created pursuant to KRS Chapter 67A, whose principal address is 200 East Main Street, Lexington, Kentucky 40507 (hereinafter referred to as "LFUCG") through its **OFFICE OF AFFORDABLE HOUSING**, and **OAKDALE APARTMENTS, LLC**, a Kentucky limited liability company, whose principal address is 1417 Hepburn Avenue, Louisville, Ky. 40204 (hereinafter referred to as the "Borrower").

**WITNESSETH:**

**WHEREAS**, pursuant to Chapter 2, Article XXXXV, Section 2-482 of the Lexington-Fayette Urban County Code of Ordinances ("the Code"), the Affordable Housing Fund ("the Fund") was created to preserve, produce, and provide safe, quality, and affordable housing; and

**WHEREAS**, pursuant to Chapter 2, Article XXXXV, Section 2-479 of the Code, the Affordable Housing Governing Board oversees and manages the administration of the Fund; and

**WHEREAS**, Borrower by application dated August 12, 2021 (hereinafter referred to as the "Application"), attached hereto and incorporated herein as Exhibit A, has applied for and has received approval for funds for a specific housing related project described below (hereinafter referred to as the "Eligible Activity"); and

**WHEREAS**, in order to assist Borrower in the funding of the Eligible Activity, LFUCG is willing to make funds available to Borrower from the Fund under the terms and conditions of this Agreement and the terms of its Commitment Letter, dated January 20, 2022 (hereinafter referred to as the "Commitment") attached hereto and incorporated herein as Exhibit B; and

**WHEREAS**, the project for which Borrower has been approved includes new construction activities of property.

**NOW, THEREFORE**, the parties do hereby agree as follows:

**Article 1 - Commitment**

**1.1 LFUCG'S COMMITMENT.** Pursuant to the Application and this Agreement, LFUCG will make available an amount not to exceed **ONE MILLION TWO HUNDRED THOUSAND DOLLARS (\$1,200,000.00)** ("AHF Loan") to Borrower from the Fund. Affordable Housing Funds will be disbursed by LFUCG to Borrower in accordance with the requirements set forth in this Agreement and in the Commitment, conditioned upon Borrower's continued satisfactory performance under the terms of this Agreement. The Loan will be made available in the form of a fifteen-year loan, which shall accrue interest at the rate of zero percent (0%) per annum. The Loan will be evidenced by one or more promissory notes ("Notes", and together with this Agreement and any related documents, the "Loan Documents") in form and substance satisfactory to LFUCG payable to LFUCG and signed by Borrower. Principal and interest (if any) of the Loan shall be amortized in equal, consecutive installments of principal and accrued but unpaid interest, commencing as set forth in the Notes and continuing until principal and interest have been paid in full. All unpaid principal and accrued interest shall be due **August 1, 2040** ("Maturity Date"). In

the event of any inconsistency between the Application and this Agreement, this Agreement will control. The Loan will be expended only for the purpose of new construction on the Property (defined below) described in the mortgage(s) executed pursuant to Section 1.2 below and in conformity with the other provisions of this Agreement, the Commitment and the Application. Further, LFUCG will not be required to advance any amount under this Agreement if an Event of Default (as hereinafter defined) has occurred and is continuing.

**1.2 MORTGAGE; OTHER SECURITY.** The performance of the Borrower's obligations under this Agreement shall be secured by a mortgage lien, or mortgage liens, in favor of LFUCG in the total principal amount of the Loan in form and substance satisfactory to LFUCG. In the sole discretion of LFUCG, the performance of Borrower's obligations under this Agreement may also be secured by an Assignment of Leases and Rents, Security Agreement, UCC-1 Financing Statement, Fixture Filing, and such other documents as LFUCG may in its sole discretion require (collectively, the mortgage(s) and the other security documents described in this subsection are referred to as the "Security Documents," the terms and conditions of which are incorporated herein).

**1.3 ELIGIBLE ACTIVITY.** The Loan has been made available based upon the information provided by Borrower in the Application. The sole purpose of this allocation is to construct and acquire 144 units known as Oakdale Apartments on the property located at 1201 Greendale Road ("Project" or "Property").

**1.4 SITES.** In the event the Project includes new construction activities, Borrower must identify specific units (the "Units") to be assisted. Once identified, Units may not be changed, removed or substituted without prior written approval of LFUCG.

## **ARTICLE 2 - REPRESENTATIONS AND WARRANTIES OF BORROWER**

**2.1** Borrower represents and warrants that:

(a) The Property will be free and clear of all encumbrances, except for that certain Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Financing Statement ("**Senior Mortgage**") issued by Borrower in favor of Cedar Rapids Bank and Trust Company ("**Senior Lender**") related to a construction-to-permanent loan in the amount of **\$15,930,000.00**, and that certain Swap Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Financing Statement ("**Swap Mortgage**" and hereafter, with the Senior Mortgage, the "**Permitted Encumbrances**") in favor of Senior Lender, and clear of easements, restrictions, stipulations and rights-of-way of record, applicable zoning rules and regulations and taxes which may be due and payable or which have been assessed and become a lien against the property whether or not yet due and payable. The AHF Loan shall be in all respects subordinate to the Permitted Encumbrances.

(b) All funds disbursed hereunder will be used only for acquisition or development expenses, as applicable, of the Property, as approved by LFUCG, and said funds will not be used in any other manner or for any other purpose; and

(c) The acquisition or construction work has been approved by the appropriate local, regional and state agencies, including those concerned with planning and zoning, public

works and health.

**2.2** Borrower understands and acknowledges that projects assisted with LFUCG Funds must, at a minimum, meet the requirements set out in this Agreement. Borrower will supply, at LFUCG's request, all necessary documentation to substantiate compliance with this paragraph.

**2.3** Borrower represents and warrants that, at the time any advances are made by LFUCG as provided herein, the Property will contain no substance known to be hazardous such as hazardous waste, lead-based paint (in violation of Federal or State law), asbestos, methane gas, urea formaldehyde, insulation, oil, toxic substances, polychlorinated biphenyls (PCBs) or radon, and Borrower shall take all action necessary to ensure that the Property contains no such substances. Further, the Property will not be affected by the presence of oil, toxic substances or other pollutants that could be a detriment to the Property, nor is Borrower or the Property in violation of any local, state or federal environmental law or regulation and no violation of the Clean Air Act, Clean Water Act, Resource Conservation and Recovery Act, Toxic Substance Control Act, Safe Drinking Water Control Act, Comprehensive Environmental Resource Compensation and Liability Act or Occupational Safety and Health Act has occurred or is continuing. Borrower will take all actions within its control necessary to insure that no such violation occurs. Borrower will immediately deliver to LFUCG any notice it may receive about the existence of any of the foregoing hazardous conditions on the Property or about a violation of any such local, state or federal law or regulation with respect to the Property.

**2.4** Borrower is duly organized and validly existing and in good standing under the laws of the Commonwealth of Kentucky; has the power and authority, corporate or otherwise, to own its properties and carry on its business as being conducted; and is duly qualified to do business wherever qualification is required. Borrower has been organized pursuant to state law for the primary purpose of providing housing to persons and families of lower and moderate income. Borrower is not presently under any cease or desist order or other orders of a similar nature, temporary or permanent, of any federal or state authority which would have the effect of preventing or hindering the performance of its duties under this Agreement, nor are there any proceedings presently in progress or to its knowledge contemplated which would, if successful, lead to the issuance of any cease or desist order.

**2.5** Plans and specifications for the Project are satisfactory to Borrower and, to the extent required by applicable law, have been approved by all governmental agencies and authorities having jurisdiction thereof, and the use of the Project site(s) contemplated hereby will comply with all local zoning requirements.

**2.6** There are no actions, suits or proceedings pending or, to the knowledge of the Borrower, threatened against or affecting it or the Project or involving the validity or enforceability of any mortgage or the priority of the mortgage lien granted by or to Borrower, at law or in equity, on or before or by any governmental authority or any other matters which would substantially impair the ability of Borrower to pay when due any amounts which may become payable in respect to the Notes, and to the Borrower's knowledge, it is not in default with respect to any order, writ, judgment, injunction, decree or demand of any court of any governmental authority.

**2.7** The consummation of the transaction contemplated hereby and the performance of this Agreement and any Mortgage, if so required, will not result in any breach of, or constitute a default under, any mortgage, deed of trust, lease, bank loan or other loan, credit agreement,

corporate charter, bylaw or any other instrument to which the Borrower is a party or by which it may be bound or affected.

### **ARTICLE 3 – REQUIREMENTS FOR DISBURSEMENT**

**3.1 DISBURSEMENT OF AFFORDABLE HOUSING FUNDS.** The Loan will be disbursed to Borrower upon receipt by LFUCG of the following:

- (a) an executed original of the Authorized Signature form; and
- (b) evidence that the Project will remain affordable as provided below;
- (c) an executed LFUCG Construction Start-Up Form;
- (d) proof of costs in adherence to LFUCG's requirements for draws and inspections for the Program activity under this Agreement (construction draws);
- (e) execution of the Notes, recordation of a valid mortgage lien against the Property securing repayment of the Loan, recordation of a Declaration of Covenants and Restrictions, and execution of any and all other Security Documents which may be required by LFUCG.

LFUCG will not be required to advance any amount hereunder if an Event of Default (hereinafter defined) has occurred and is continuing.

**3.2 DISBURSEMENT OF DEVELOPER FEE.** If a Developer fee is paid with the Loan proceeds, it will be disbursed on a pro-rata share equal to the percent of the Project completion, with the exception of the initial draw as follows:

- (a) up to 40% of the Project's developer fee may be disbursed at the initial draw;
- and
- (b) the remaining 60% may be drawn based upon the percentage of construction completion.

Developer fee shall be used to cover all funding shortfalls before additional funds can be requested. LFUCG will continue to hold the ten percent (10%) retainage until all project completion and closeout documents are received.

**3.3 AFFORDABILITY PERIOD.** The Property must remain affordable to persons at or below eighty percent (80%) of the area median income pursuant to the guidelines of the United States Department of Housing and Urban Development (HUD) for a minimum of twenty (20) years from the date the Loan proceeds are first expended on the Project. Affordability must be ensured by recorded deed restrictions for all properties receiving Affordable Housing Funds. Only LFUCG, or its successors and assigns, has the right to release the deed restrictions prior to the date on which the restrictions expire.

**3.4 SECTION 8 RENTAL ASSISTANCE.** If Loan proceeds are used to construct rental property, Borrower will not refuse to lease any Unit assisted with Affordable Housing Funds to a holder of a voucher or certificate of eligibility under Section 8 of the United States Housing Act of 1937, as amended, solely because of the status of the prospective tenant as a holder of a certificate or voucher. Provided, however, if the rent required for the Unit is based upon a percentage of the prospective tenant's income through project design, or the assisted housing unit(s) utilize project-based rental housing assistance through another source, this section will not apply. This section does not apply to homeowner-occupied units of housing assisted with



Affordable Housing Funds.

**3.5 INSURANCE.** For all properties assisted with Affordable Housing Funds, the Borrower or Property Owner must maintain all risk, fire and extended coverage, in form and with companies acceptable to LFUCG, for each Unit of the Project and any improvements to be constructed thereon in an amount of not less than the Affordable Housing Funds made available to Borrower for each Unit of the Project. Each policy must include appropriate loss payable clauses in favor of LFUCG or Borrower, as applicable, as beneficiary and without right of cancellation or change except upon thirty (30) days' written notice to LFUCG. Borrower will deliver proof of all insurance to LFUCG upon request.

**3.6 CLOSING COSTS.** All costs associated with funding under this Agreement will be borne by the Borrower, including but not limited to the cost of attorneys' fees, documentation, recording fees, and costs associated with disbursement. There will be a one percent (1%) Closing Cost Fee of **TWELVE THOUSAND DOLLARS (\$12,000.00)**.

**3.7 REPAYMENT.** In the event that repayment of the Affordable Housing Funds is required, Borrower agrees to repay funds to the Fund through LFUCG on a timely basis.

**3.8 LEGAL MATTERS.** All legal matters incident to the contemplated transaction will be concluded to the satisfaction of LFUCG's Department of Law.

**3.9 PROOF OF CORPORATE ACTION.** Prior to execution of this Agreement, LFUCG shall have received (i) copies of Borrower's organizational documents; (ii) confirmation from the Secretary of State of Borrower's organizational jurisdiction that Borrower is a validly existing entity in good standing, and (iii) a resolution from the Borrower's Board of Directors, member, manager or general partner, as appropriate, authorizing the execution of the legal documents evidencing the funding received under this Agreement. If Borrower is a foreign entity, it shall, in addition to jurisdictional organizational documents provide evidence of its authority to conduct business in the Commonwealth of Kentucky.

#### **ARTICLE 4 - CONSTRUCTION LOAN TERMS**

**4.1 PLANS AND SPECIFICATIONS.** Borrower will develop the Property in accordance with plans and specifications which have been approved by LFUCG, or by any other agency approved by LFUCG, which plans and specifications, upon such approval, will be incorporated herein by reference. Said plans and specifications will include and specifically identify all roads, sewer lines and water lines and will provide for the development of the Property in conformance with applicable Affordable Housing Program requirements. Said plans and specifications may be subject to minor changes as required to comply with state and local building codes and to conform to the Property, provided such changes are approved by LFUCG. In addition to said plans and specifications, Borrower will prepare or cause to be prepared from time to time such additional plans and drawings, including working drawings, shop drawings and supplemental specifications, as may be necessary or desirable to facilitate expeditious construction of the improvements in accordance with the approved plans and specifications and will cause copies of all such additional items to be delivered to LFUCG. All of said plans and specifications and any such additional items so approved are hereinafter collectively referred to as the "Plans and Specifications." Borrower will not deviate nor permit any such deviation from the Plans and Specifications without the prior written consent of LFUCG.

**4.2 NO LIENS.** Borrower will cause all work to be performed, including all labor, materials, supervision, supplies, equipment, architectural, and engineering services necessary to complete the improvements, in accordance with the Plans and Specifications. The Borrower will complete the improvements free from all materialmen's liens and all mechanic's liens and claims. All contracts with subcontractors and materialmen will contain, upon the request of LFUCG, a provision for not less than ten percent (10%) retainage to ensure adequate and complete performance in connection with interim or progress payments hereunder. Advances of the Affordable Housing Funds by LFUCG will not be made until a representative of LFUCG has inspected the improvements, certified their completion and received from the general contractor and all subcontractors affidavits, in form and substance satisfactory to LFUCG, stating that payment will constitute payment in full of all amounts due and owing to them and their suppliers.

**4.3 DEADLINE ON PROPERTY DEVELOPMENT.** Borrower will begin development of the Property within 30 days after an advance is made hereunder for the Property and will cause all development work to be pursued with diligence and without delay. Borrower will cause the improvements to be constructed in a good and workmanlike manner in substantial compliance with the Plans and Specifications and in all respects in full compliance with all laws, rules, permits, requirements and regulations of any governmental agency or authorities having jurisdiction over the Property.

**4.4 USE OF FUNDS.** Borrower will cause all Affordable Housing Funds borrowed or advanced pursuant hereto to be applied entirely and exclusively for the acquisition or development, as applicable, of the Property and payment of labor and materials in the completion of development work in substantial compliance with the Plans and Specifications and for the payment of such other costs incidental thereto as may be specifically approved in writing by LFUCG.

**4.5 RIGHT OF INSPECTION.** Borrower will permit access by LFUCG to the books and records of Borrower and to the Property and all improvements at reasonable times. In the event LFUCG determines that any work or materials are not substantially in conformance with the Plans and Specifications, or are not in conformance with any applicable laws, regulations, permits, requirements or rules of any governmental authority having or exercising jurisdiction thereover or are not otherwise in conformity with sound building practices, LFUCG may stop the work and order replacement or correction of any such work or materials. Such inspection will not be construed as a representation or warranty by LFUCG to any third party that the improvements are, or will be, free of faulty materials or workmanship.

**4.6 UNDERTAKING.** If required by LFUCG prior to disbursement of Affordable Housing Funds hereunder and thereafter as LFUCG may require, Borrower will deliver to LFUCG (a) an agreement between Borrower and the architect who has prepared the Plans and Specifications whereby such architect agrees that the agreement is assignable to LFUCG upon the same terms and conditions as exist in said agreement; (b) an agreement between Borrower and Borrower's contractor whereby Borrower's contractor agrees that the agreement is assignable to LFUCG upon the same terms and conditions as exist in said agreement; (c) copies of all subcontracts and material purchase orders between Borrower's contractor and any persons, firms, or corporations with whom it has contracted to provide labor, materials or services with respect to the construction of the improvements, where any such contract exceeds a minimum price of Five Thousand Dollars (\$5,000.00); and (d) if requested in writing by LFUCG, a list of all persons, firms and corporations who have provided or proposed to provide labor, materials or services in connection with construction of the improvements.

**4.7 NONLIABILITY OF LFUCG.** This Agreement will not be construed to make LFUCG liable to materialmen, contractors, craftsmen, laborers or others for goods and services delivered by them to or upon the Property or for debts or claims accruing to said parties against the Borrower. There are no contractual relationships, either express or implied, between LFUCG and any materialman, contractors, craftsmen, laborers or any other persons supplying work, labor or materials on the job, nor will any third person or persons, individual or corporate, be deemed to be beneficiaries of this Agreement or any term, condition or provisions hereof or on account of any actions taken or omitted by LFUCG pursuant hereto.

#### **ARTICLE 5 – BREACH OR DEFAULT**

**5.1 RECAPTURE OF FUNDS; BREACH OF AGREEMENT.** In the event of a breach, LFUCG may suspend Borrower's authority to draw Affordable Housing Funds at any time by giving notice to Borrower. LFUCG has the right, in its sole discretion, to terminate disbursement of funds and/or recapture any remaining portion of Affordable Housing Funds and/or require repayment of Affordable Housing Funds already disbursed or the amount including and up to an amount which has not been forgiven upon the occurrence of one or more of the following events (“Breach”):

(a) Borrower does not diligently pursue the activity detailed in Borrower’s Application and for which Affordable Housing Funds have been awarded;

(b) Borrower violates any of the terms of this Agreement, the Affordable Housing Program ordinances, the Notes evidencing the Affordable Housing Funds under this Agreement, the Declaration of Covenants and Restrictions, or any other Security Document entered into pursuant to this Agreement;

(c) Borrower does not submit reports or submits inadequate reports pursuant to Article 6 below;

(d) Borrower defaults under any of the terms of this Agreement or any other document executed in conjunction with funding under this Agreement, and such default is not cured within any applicable cure period;

(e) Borrower is unable to draw all Affordable Housing Funds, as set forth in the closing documents, in no instance later than twenty-four (24) months from the date of this Agreement;

(f) Borrower is unable to document its participation in the project throughout the compliance period as required of nonprofit material participation per IRC Section 42;

(g) the information submitted to LFUCG by Borrower, upon which LFUCG relied in its decision to allocate funds to Borrower, proves to be untrue or incorrect in any material respect; or

(h) LFUCG determines in its sole discretion that it would be inadvisable to disburse Affordable Housing Funds to Borrower because of a material and adverse change in Borrower’s condition.

**5.2 EVENTS OF DEFAULT.** Occurrence of one or more of the following events will, in the sole discretion of LFUCG, constitute an “Event of Default”:

(a) Any installment of principal or interest required by the Notes remains unpaid

for more than ten (10) days after the due date thereof;

(b) Any representation or warranty made herein, or in any certificate, report or statement furnished to LFUCG in connection the Affordable Housing Funds or the Notes proves to have been untrue or misleading in any material respect when made;

(c) Failure of Borrower to perform any of the provisions of the Notes, Mortgage, this Agreement or any other document executed in connection with this Agreement;

(d) Borrowers violation of the affordability requirements, whether evidenced by recorded deed restriction or owner certification of continued compliance;

(e) The entry of any lien or encumbrance against the Project site(s), (other than liens or encumbrances evidencing loan proceeds for the Permitted Encumbrances), except for ad valorem taxes which are not yet due and payable and liens incurred in the ordinary course of business with respect to amounts which are not yet due and payable without penalty or interest;

(f) Borrower fails to prosecute Project site development work with diligence so that construction thereof will be completed in a timely manner;

(g) Any party obtains or seeks an order or decree in any court of competent jurisdiction seeking to enjoin the construction of the improvements or to delay construction of the same or to enjoin or prohibit Borrower or LFUCG from carrying out the terms and conditions hereof, and such proceedings are not discontinued or such decree is not vacated within thirty (30) days after LFUCG has given Borrower notice under the provisions hereof;

(h) Borrower discontinues the construction work and abandonment continues for a period of ten (10) days;

(i) Borrower permits cancellation or termination of any insurance policy required under this Agreement or fails, if required, to obtain any renewal or replacement thereof satisfactory to LFUCG;

(j) Borrower (A) becomes bankrupt, or ceases, becomes unable, or admits in writing its inability to pay its debts as they mature, or makes a general assignment for the benefit of, or enters into any composition or arrangement with, creditors; (B) applies for, or consents (by admission of material allegations of a petition or otherwise) to the appointment of a trustee, receiver or liquidator of the Borrower or of a substantial portion of its assets, or authorizes such application or consent, or proceedings seeking such appointment are commenced without such authorization, consent or application against it and continue un-dismissed and unstayed for a period of fifteen (15) days; (C) authorizes or files a voluntary petition in bankruptcy, reorganization, readjustment of debt, insolvency, dissolution, liquidation or other similar law of any jurisdiction; or authorizes such application or consent; or proceedings to such end are instituted against the Borrower without such authorization, application or consent and are approved as properly instituted, remain undismissed for fifteen (15) days, or result in adjudication of bankruptcy or insolvency;

(k) Borrower is found to have violated any law or regulation, whether federal or state;

(l) Borrower defaults in any loan document executed in favor of any senior lienholder; or,

(m) Any proceeding is filed that may result in a foreclosure of the Property.

**5.3 CURE OF BREACH OR DEFAULT; PENALTIES.** If any breach or default is not cured within thirty (30) days from the date LFUCG notifies Borrower and Borrower's managing member ("Managing Member") of the breach or default in writing, LFUCG may continue suspension of disbursements. However, any managing member of the Borrower shall have the right, but not the obligation, to cure any default on the same terms and conditions as Borrower, and such cure shall be accepted or rejected by LFUCG, as if such cure was made by Borrower. Additionally, LFUCG may declare the loan and/or grant immediately due and payable and may institute proceedings for its collection. LFUCG may terminate this Agreement by giving written notice to Borrower. In the event of a termination, Borrower's authority to draw Affordable Housing Funds will terminate as of the date of the notice of termination and Borrower will have no right, title or interest in or to any remaining Affordable Housing Funds. The Borrower's investor member ("Investor Member") shall have the right to cure any Event of Default existing under the Loan Documents which right must be exercised by the later of (a) the cure period provided in the Loan Documents, or (b) 15 days after receipt of written notice of default by the Investor Member. For the Investor Member to effectively exercise its cure rights, the Investor Member must fully pay the amount past due or perform the defaulted obligations, including the payment of any amounts due for legal expenses incurred in connection with the default. Notwithstanding anything to the contrary in the Loan Documents, upon the occurrence of an Event of Default arising out of: (i) the bankruptcy, insolvency or assignment of assets for the benefit of creditors by the Managing Member, or (ii) the withdrawal from Borrower of the Managing Member, or the death or incapacity of the Managing Member, or (iii) a breach of the representations concerning such Managing Member, the Investor Member shall have the option, but not the obligation, within 45 days of receipt of written notice of such Event of Default from LFUCG, to cure any such default by appointing a substitute or additional managing member that is an affiliate of the Investor Member to act as such managing member.

**5.4 MISAPPROPRIATION OF FUNDS.** Borrower will be liable for any and all misappropriation of Affordable Housing Funds, audit exceptions by state or federal agencies, and violations of the terms of this Agreement. LFUCG also has the right to require Borrower to repay to LFUCG a portion of or all Affordable Housing Funds drawn by Borrower in cases of breach involving a material misrepresentation in any document furnished to LFUCG in connection with the Borrower's Application for Funds, misappropriation of funds, or fraudulent uses of funds.

**5.5 RIGHTS UPON DEFAULT.** If one or more of the events of default described above occur, LFUCG may declare Borrower to be in default under this Agreement by giving not less than then (10) days prior written notice (or other notice required by applicable default provisions in other LFUCG loan documents) to Borrower, except for a default in payment, in which case no notice is required, and thereafter, LFUCG may exercise any one or more of the following remedies:

(a) Terminate the credit hereby extended, declare the entire unpaid balance and all accrued but unpaid interest under the Notes due and payable and institute proceedings for collection thereof; provided, however, LFUCG may make advances under the occurrence of an event of default without waiving any of its rights hereunder;

(b) Exercise its rights under the Notes or any other Security Document;

(c) Enter upon the Project site(s), expel and eject Borrower and all persons

claiming through or under Borrower and collect the rents and profits therefrom;

(d) Complete the Project site development work at the cost and expense of Borrower and add such cost to the debt evidenced by the Loan and/or grant and this Agreement and secured by the Security Documents;

(e) Have discharged of record any mechanic's and materialmen's lien or other lien against the Project site(s);

(f) Institute such legal proceedings or other proceedings in the name of Borrower or LFUCG as LFUCG may deem appropriate for the purpose of protecting the Project site(s) and LFUCG's interests therein; or

(g) Do and perform all acts and deeds in the name of Borrower or LFUCG as LFUCG deems necessary or desirable to protect the Project site(s) and LFUCG's interests therein.

(h) All of the rights and remedies of LFUCG under this Agreement shall be cumulative and to the fullest extent permitted by law and shall be in addition to all those rights and remedies afforded LFUCG at law or in equity or in bankruptcy.

**5.6 PAYMENTS DUE TO DEFAULT.** Borrower shall reimburse and fully compensate LFUCG upon demand for all loss, damage and expense, including without limitation reasonable attorney's fees and court costs, together with interest on the amount thereof from the date the same accrues at the rate of twelve percent (12%) per annum, incurred by LFUCG (a) by reason of any default or defaults hereunder or under this Agreement, the Notes, or the Security Documents or any other loan document executed by Borrower, (b) by reason of the neglect by Borrower of any duty or undertaking hereunder or under the Security Documents and (c) in the exercise of any right or remedy hereunder or under the Security Documents.

**5.7 TRANSFERS OF INTERESTS.** Notwithstanding anything to the contrary in the Loan Documents, any transfers or pledges of membership interests in the Borrower (including the removal of the managing member) are expressly permitted and shall not constitute a default hereunder.

**5.8 AMENDMENTS TO OPERATING AGREEMENT.** Notwithstanding anything to the contrary in the Loan Documents, any amendment to the Operating Agreement which does not affect the financial terms of the Operating Agreement, and does not otherwise adversely affect the security interest of LFUCG in the Premises shall not be an Event of Default.

## **ARTICLE 6 – RECORDS; REPORTING**

**6.1 RECORDS; ACCESS.** Borrower agrees to keep adequate records pertaining to the Project and the uses of Affordable Housing Funds. Borrower agrees to provide LFUCG or its designee access to all of its books and records, including fiscal records, for the purpose of program assessment reviews, and to retain all books and records until the later of three (3) years from the termination of this Agreement, or until all audits of performance during the term of this Agreement have been completed, or until any pending litigation involving this grant or related books and records is settled. Borrower agrees to maintain its books and records in accordance with generally accepted accounting principles. Nothing in this Agreement will be construed to limit the ability of LFUCG to monitor implementation of the project funded by this Agreement.

**6.2 REPORTING REQUIREMENTS.** In the event project activity reports are required,

reports must be submitted as requested by LFUCG, on the forms provided by LFUCG, beginning the first calendar quarter after Borrower receives a disbursement of Affordable Housing Funds.

**6.3 ANNUAL FINANCIAL REPORTING.** Borrower agrees to provide LFUCG or its designee audited financials and/or Financial Compilation Reports on an annual basis during the term of this Agreement.

**6.4 WARRANTY AS TO INFORMATION.** Borrower acknowledges that its award of Affordable Housing Funds has been based upon information received from Borrower. Borrower warrants that the financial and other information furnished by Borrower to LFUCG was, at the time of application, and continues to be, true and accurate.

**6.5 PROGRAM COMPLIANCE.** Borrower agrees to comply with the LFUCG Affordable Housing Program guidelines and criteria relating to the Fund.

#### **ARTICLE 7 - MISCELLANEOUS**

**7.1 NOTICES.** Any notice required or permitted to be given pursuant to this Agreement will be deemed to have been duly given when properly addressed and hand-delivered, or mailed by registered or certified mail with postage prepaid, to Borrower, Senior Lender, or LFUCG, as the case may be, at the following addresses or to such other place as any of the parties may for themselves designate in writing from time to time for the purpose of receiving notices pursuant hereto:

**Borrower:** Oakdale Apartments, LLC  
807 Farmingham Road  
Louisville, Ky. 40243  
Attn: James Duffy

**Senior Lender:** Cedar Rapids Bank and Trust Company  
500 1st Avenue NE, Suite 100  
Cedar Rapids, Iowa 52401  
Attn: Sam Kramer

**LFUCG:** Lexington-Fayette Urban County Government  
200 East Main Street, Sixth Floor  
Lexington, Kentucky 40507  
ATTN: Richard McQuady, Affordable Housing Manager

If LFUCG is required under the terms of the Loan Documents to send a notice to the Borrower, LFUCG shall concurrently send a copy of such notice to the Investor Member at:

AHP Housing Fund 301, LLC  
1314 Douglas Street, Suite 1400

Omaha, NE 68102-1944  
Attention: Legal Notices  
Email: notices@berkahp.com

**7.2 COSTS TO BE PAID BY BORROWER.** All items which Borrower agrees to furnish under this Agreement will be furnished at Borrower's sole cost and expense.

**7.3 NON-DISCRIMINATION AND FAIR HOUSING RULES.** The Project and all contractors and major subcontractors engaged in connection therewith shall comply with all fair housing and non-discrimination statutes and regulations as they are amended from time to time, which include but are not limited to the following, each of which is hereby incorporated by reference into this Agreement:

Fair Housing Act (Title VIII of the Civil Rights Act of 1968);  
24 CFR § 5.105, which prohibits discrimination on the basis of actual or perceived sexual orientation or gender identity, and marital status  
Title VI of the Civil Rights Act of 1964;  
Section 504 of the Rehabilitation Act of 1973;  
Section 109 of Title I of the Housing and Community Development Act of 1974;  
Title II of the Americans with Disabilities Act of 1990;  
Architectural Barriers Act of 1968;  
Age Discrimination Act of 1975;  
Title IX of the Education Amendments Act of 1972; and  
Presidential Executive Orders 11063, 11246, 12892, 12898, 13166, 13217.  
Nondiscrimination and Equal Opportunity requirements [24 CFR §5.105(a)]  
Chapter 2, Article 2, §§2-26 – 2-46 of the Code

**7.4 SUSPENSION AND DEBARMENT.** Borrower certifies by submission of its application and execution of this Agreement that to the best of its knowledge and belief after reasonable investigation, that it and/or its principals are not presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in any transaction under this Agreement by any federal department or agency, or under LFUCG's Suspension and Debarment Policy. Borrower further agrees that any future principal will meet the requirements of this section.

**7.5 INDEMNIFICATION.** Borrower shall indemnify, defend and hold LFUCG harmless from and against any and all liabilities, claims, demands, losses, damages, costs and expenses (including without limitation, reasonable attorney's fees and litigation expenses), actions or causes of actions, arising out of or relating to any breach of any covenant or agreement or the incorrectness or inaccuracy of any representation and warranty of Borrower contained in this Agreement or in any document delivered to LFUCG or by Borrower, or any other person on behalf of Borrower pursuant to the terms of this Agreement, except for that which occurs as a result of LFUCG's gross negligence or willful misconduct.

**7.6 GOVERNING LAW.** This Agreement and the loan referred to herein will be governed by the laws of the Commonwealth of Kentucky.



**7.7 ASSIGNABILITY.** Borrower may not assign this Agreement nor any part hereof without the prior written consent of LFUCG. Subject to the foregoing restriction, this Agreement will inure to the benefit of LFUCG, its successors and assigns and will bind Borrower, Borrower's successors, assigns and representatives.

**7.8 MODIFICATION.** No variance or modification of this Agreement will be valid and enforceable except by supplemental agreement in writing, executed and approved in the same manner as this Agreement.

**7.9 EXHIBITS.** Any exhibits attached to this Agreement and the matters contained therein are incorporated herein and deemed to be a part hereof as if fully recited in this Agreement prior to the date of execution hereof.

**7.10 WAIVER.** LFUCG may waive Borrower's performance of any of the terms of this Agreement or Borrower's default hereunder; provided, however, such waiver must be in writing, signed by LFUCG, and any such written waiver hereunder will not be construed as a waiver of any other term or condition of this Agreement or of any act of continuing default.

**7.11 INVALID PROVISIONS.** The invalidity or unenforceability of a particular provision of this Agreement will not affect the other provisions hereof, and this Agreement will be construed in all respects as if such invalid or unenforceable provisions were omitted.

**7.12 COUNTERPARTS.** This Agreement may be executed by the parties in any number of counterparts, each of which shall be an original, but such counterparts together shall constitute one and the same instrument.

WITNESS the signatures of the parties hereto as of the date and year first above written.

**LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**

By:   
Linda Gorton, Mayor

ATTEST:

  
Clerk, Urban County Council

**OAKDALE APARTMENTS, LLC**, a Kentucky limited liability company

By: Oakdale MM, LLC, its Managing Member

By: [Signature] Member  
Name: James L. Duffy  
Title: Member

COMMONWEALTH OF KENTUCKY     )  
   )  
COUNTY OF ~~FAYETTE~~ Jefferson     )

Subscribed, sworn to and acknowledged before me this 28<sup>th</sup> day of June 2022, by James Duffy, of Oakdale MM, LLC, as Managing Member of Oakdale Apartments, LLC, a Kentucky limited liability company, for and on behalf of said limited liability company.

My commission expires: 11/23/24

[Signature]  
Notary Public

