

RELEASE AND SETTLEMENT AGREEMENT

THIS AGREEMENT is made and entered into this 18th day of June, 2019, by and between the Lexington-Fayette Urban County Government ("LFUCG") and Free Contracting, Inc. ("Free Contracting") (collectively identified as "the parties").

WHEREAS, LFUCG offered a contract for a trunk sewer construction project identified as the Shandon Park, Winburn Trunk, and Thoroughbred Acres Trunk Sewers Phase 1 Project (hereinafter identified as "the project"), a Remedial Measures Program Project required by the Consent Decree between the United States Environmental Protection Agency, the Commonwealth of Kentucky, and LFUCG ("CONSENT DECREE"), of record in a case styled United States of America and Commonwealth of Kentucky vs. Lexington-Fayette Urban County Government, United States District Court for the Eastern District of Kentucky, Civil Action No. 5:06-cv-386-KSF; and

WHEREAS, LFUCG accepted the bid of Free Contracting in the amount of \$3,929,723.29 for the construction of the project and executed an agreement with Free Contracting for the construction of the project, identified as LFUCG Contract #24-2018 and authorized by Resolution No. 15-2018, of record in the office of the Lexington-Fayette Urban County Council Clerk; and

WHEREAS, shortly after work on the project was initiated, the parties discovered that the existing sanitary sewer line for the Thoroughbred Acres Trunk A (TAT-A) portion of the project had been cast into the bases of the existing manholes, necessitating a re-design of the TAT-A portion of the project; and

WHEREAS, pursuant to Section 10.05 and Article 12 of the Standard General Conditions of the Construction Contract, appended to and incorporated into the contract between the parties, Free Contracting referred a claim for an adjustment in contract time and contract price to the Engineer for decision, asserting a claim for additional contract days and alleging increased production costs based on delays associated with the re-design of the TAT-A portion of the project; and

WHEREAS, pursuant to Section 10.05(C) of the Standard General Conditions, the Engineer rendered a decision that granted an additional time extension of 87 days due to the re-design of the TAT-A sewer line, but denied any additional costs for lost production due to winter weather; and

WHEREAS, pursuant to Section 10.05(E) and Article 16 of the Standard General Conditions, Free Contracting invoked the dispute resolution procedures and requested mediation of their claim for adjustments in contract time and contract price due to the delays associated with the re-design of the TAT-A sewer line; and

WHEREAS, the parties mediated the claim on March 11, 2019 and reached an agreement on Free Contracting's claim for adjustments in contract time and contract price based on delays associated with the re-design of the TAT-A portion of the project, which the parties now desire to reduce to writing.

NOW, THEREFORE, in consideration of the mutual promises contained herein, the sufficiency of which is hereby acknowledged by each of the parties, **IT IS HEREBY AGREED AS FOLLOWS:**

1. Contract Price. With regard to the claim for an adjustment in contract price, LFUCG shall pay Free Contracting the sum of ONE HUNDRED AND TWENTY SIX THOUSAND DOLLARS (\$126,000.00), following the approval of a change order by LFUCG, which change order shall identify said sum as an agreed upon adjustment in contract price related to delays with the re-design of the TAT-A portion of the project. Included in this adjustment in contract price is full reimbursement for cold patch installed pursuant to Work Change Directive 1, which Free Contracting acknowledges and agrees fully resolves its claim of \$29,026.55 for the cost of furnishing such cold patch. Free Contracting warrants and represents to LFUCG that, as of the date of this agreement, no additional cold patch has been installed pursuant to Work Change Directive 1.

2. Contract Time. With regard to the claim for an adjustment in contract time, Free Contracting agrees to provide beneficial occupancy of the project plus completion of all non-vegetative restoration work **no later than June 30, 2019**, and LFUCG shall, by change order, extend the contract time accordingly; provided, however, this June 30, 2019 date is subject to, any weather days to which Free Contracting would otherwise be entitled under the contract. Additional weather days shall be calculated from March 11, 2019. This June 30, 2019 date is also subject to other requests for extensions of contract time, which shall be considered by LFUCG in accordance with the contract; provided, however, that nothing herein shall limit LFUCG's rights or remedies regarding additional delays.

3. Penalties under Consent Decree. LFUCG hereby agrees to waive and release Free Contracting from any fines, penalties, or damages that LFUCG may incur under the Consent Decree as a result of delays in completion of the Shandon Park Trunk, Winburn Trunk, and Thoroughbred Acres Trunk Sewers Phase 1 Project, for the period up to and including June 30, 2019. Provided, however, that with regard to any delays after June 30, 2019, Free Contracting shall be specifically liable and responsible for payment of any and all penalties, fines, or fees assessed against or incurred by LFUCG under the Consent Decree as a result of any delay in, or non-performance of, any of Free Contracting's obligations or responsibilities under the contract or for any other damages suffered by LFUCG as a result of such delay or non-performance. Provided, however, that as stated in paragraph 10 below, nothing herein shall be construed as imposing upon Free Contracting liability or responsibility for fines, penalties, or damages incurred by LFUCG under the Consent Decree beyond that which exists in the contract.

4. Release. Conditioned on this Agreement and the execution of a change order approved by the Urban County Council, LFUCG and Free Contracting do hereby mutually release and forever discharge each other from any and all claims, demands, damages, actions, causes of action, obligations, rights, expenses, costs, compensation, or suits at law or in equity they now or may hereafter have related to Free Contracting's claim for adjustments in contract price and contract time based on delays associated with the re-design of the TAT-A portion of the Shandon Park Trunk, Winburn Trunk, and Thoroughbred Acres Trunk Sewers Phase 1 Project and its claim of

\$29,026.55 for cold patch installed pursuant to Work Change Directive 1, and the parties do hereby release, acquit and forever discharge each other and their respective officials, agents, employees, successors and assigns, and all other persons, firms, or corporations connected therewith, of and from any and all claims, demands, damages, actions, causes of action, obligations, rights, expenses, costs, compensation, or suits at law or in equity, of whatever kind or nature whatsoever which they now have or which may hereafter accrue to either of them on account of, or in any way growing out of delays associated with the re-design of the TAT-A portion of the project and Free Contracting's claim of \$29,026.55 for cold patch installed pursuant to Work Change Directive 1. This Mutual Release, when effective, completely and forever settles all matters in dispute between Free Contracting and LFUCG which have been, are, or could have been alleged in relation to Free Contracting's claim for adjustments in contract price and contract time related to delays with regard to the re-design of the TAT-A portion of the project and its claim of \$29,026.55 for cold patch installed pursuant to Work Change Directive 1.

It is also understood and agreed that this Mutual Release, when effective, shall be binding on the parties and on all of their successors, officers, directors, employees, assigns, heirs, executors, administrators, agents, sureties, insurers and legal representatives, in relation to the above referenced claim.

Free Contracting warrants and represents to LFUCG that it is aware of no liens or claims of any type by third parties relating to or arising out of this adjustment in contract time and price for work performed under the contract, but Free Contracting understands

and agrees that the indemnification and hold harmless provisions of the contract shall remain in force and effect as provided therein, notwithstanding this release. Provided, however, that as provided in paragraph 10 below, nothing herein shall be construed as giving LFUCG indemnification and hold harmless rights against Free Contracting beyond that which exist in the contract.

5. No Admission of Liability. This Agreement is a compromise and settlement of disputed and contested claims, and is entered into by the parties hereto to avoid the expense and inconvenience of litigation. Nothing contained herein shall be construed as an admission by any party hereto of any liability of any kind to any other party.

6. Choice of Law. This Agreement shall be construed and interpreted in accordance with the laws of the Commonwealth of Kentucky. The language of all parts of this Release and Settlement Agreement shall in all cases be interpreted as a whole, according to its fair meaning, and not strictly for or against any of the parties. The parties agree that the language used herein has been reviewed and agreed upon by counsel for all parties and that no party shall be deemed the author or drafter thereof.

7. Choice of Forum. The parties hereby consent to the exclusive jurisdiction of the Fayette Circuit Court in Lexington, Kentucky, and to the appellate courts of the Commonwealth of Kentucky, with respect to all matters relating to and referred to in this Agreement.

8. Severability. Should any provision of this Agreement be declared or determined, by any Court, to be illegal, invalid, or unenforceable, the validity of the remaining items and provisions of this Agreement shall not be affected by such a

declaration or determination. If any word, clause, phrase, sentence, or paragraph of this Agreement is declared void or unenforceable, such portion shall be considered independent of, and severable from, the remainder, the validity of which shall remain unaffected.

9. Entire Agreement. This Agreement sets forth the entire agreement between the parties with regard to the matters set forth herein. There are no other understandings or agreements, verbal or otherwise, in relation thereto, between the parties except as herein expressly set forth. All prior representations are merged into this Agreement. This Agreement cannot be amended, modified, or supplemented except by a subsequent written agreement signed by the parties.

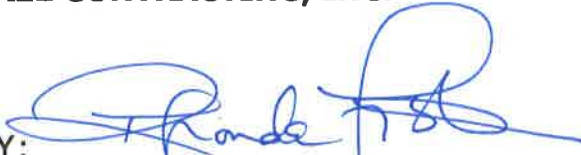
10. In all other respects, except as specifically modified herein, the terms and conditions of the contract between LFUCG and Free Contracting, identified as LFUCG Contract #24-2018 and authorized by Resolution No. 15-2018, shall remain in full force and effect.

11. The parties hereby declare that the terms of this agreement have been completely read by each and that each has had an opportunity to discuss the contents of this Agreement with his/her/its attorney(s). In addition, the parties hereby declare that the terms of this agreement have been fully understood and voluntarily accepted for the purpose of making a full and final settlement of any and all claims for adjustments in contract price or contract time, related to the claims which are the subject of this Agreement.

IN WITNESS WHEREOF, the parties have hereunto set their hand this 18th

day of June, 2019.

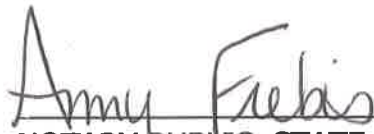
FREE CONTRACTING, INC.

BY: 
Rhonda W. Fister, P.E., President

STATE OF KENTUCKY)
)
COUNTY OF FAYETTE)

Subscribed and sworn to before me by Rhonda W. Fister, P.E., President of Free Contracting, Inc., on this the 18th day of June, 2019.

My Commission Expires: 8-13-19


NOTARY PUBLIC, STATE AT LARGE,
KENTUCKY

**LEXINGTON-FAYETTE URBAN COUNTY
GOVERNMENT**

BY: *Linda Gorton*
Linda Gorton, Mayor

STATE OF KENTUCKY)
)
COUNTY OF FAYETTE)

Subscribed and sworn to before me by Linda Gorton, Mayor, Lexington-Fayette Urban
County Government, on this the 2 day of ~~June~~, 2019.

My Commission Expires: *July* December 28, 2019

[Signature] #547793
NOTARY PUBLIC, STATE AT LARGE,
KENTUCKY