

R-083-2020

C-037-2020

MEMORANDUM OF UNDERSTANDING

Between the

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

and the

ADMINISTRATIVE OFFICE OF THE COURTS

WHEREAS, KRS 26A.090 to 26A.168 governs the provision, development, and operation of facilities for the use of the Kentucky Court of Justice ("KCOJ");

WHEREAS, pursuant to KRS 26A.100, a local unit of government is charged with the responsibility of providing facilities for the use of the KCOJ ("court facilities") in each county of the Commonwealth of Kentucky;

WHEREAS, the Administrative Office of the Courts ("AOC") is the operational arm of the KCOJ;

WHEREAS, the Lexington-Fayette Urban County Government ("LFUCG") is a local unit of government as contemplated by KRS 26A.100 which currently provides court facilities for the use of the KCOJ in the Fayette County Circuit Court facility located at 120 N. Limestone, Lexington, Kentucky, 40507;

WHEREAS, the LFUCG is responsible for operating and maintaining the Fayette County Circuit Court facility;

WHEREAS, the AOC reimburses the LFUCG for operating costs and maintenance expenses associated with the space ("operating costs") in accordance with KRS 26A.090 and KRS 26A.115 and as determined on an annual basis per the Court Facilities Local Government Reimbursement Form;

WHEREAS, AOC has identified a need to renovate the law library and Kentucky Court of Appeals office space in the Fayette County Circuit Court facility ("Project");

WHEREAS, AOC will retain an architect ("Architect") to perform design services for the Project;

WHEREAS, LFUCG will contract a construction services provider ("Constructor") to perform construction services for the Project; and

WHEREAS, the Parties enter into this Memorandum of Understanding ("MOU") to set forth their rights and obligations throughout the duration of the Project.

NOW, THEREFORE, the AOC and the LFUCG mutually agree as follows:

I. SCOPE OF SERVICES:

A. Obligations of the AOC:

1. The AOC agrees to provide a project manager to be the AOC contact to facilitate the Project with the LFUCG, the Architect, and the Constructor.
2. AOC will use its vendor for relocation of mobile file systems and will be responsible for associated expenses.
3. AOC will retain an Architect to provide design services for the Project.
4. AOC will pay the Architect for those services and any resulting purchase orders.
5. Whenever the terms of this MOU provide for approval by the AOC, the approval shall not be unreasonably withheld. Any request for approval shall be considered and acted upon by the AOC in a timely fashion.
6. The AOC agrees to make monthly reimbursement payments to the LFUCG for construction services for the Project, not to exceed \$800,000.00. Once the contract price is established, the AOC will not reimburse the LFUCG for any increases in the contract price unless a change order is reviewed and approved by AOC prior to execution as required by Section I.B.6 of this MOU. To receive reimbursement, the LFUCG shall submit to Danny Rhoades all paid invoices / pay applications for the month along with a copy of the LFUCG's cancelled check showing the payment(s) made by the LFUCG to the construction services provider and the Architect. The total amount of AOC reimbursement for this Project, including approved change orders, shall not exceed \$800,000.00.
7. The obligations of the AOC are subject to biennial appropriations by the General Assembly, which funds have been appropriated for this project in this biennium which ends June 30, 2020.

B. Obligations of the LFUCG:

1. The LFUCG agrees to retain a Constructor to provide construction services for the Project.
2. The LFUCG will pay the Constructor via LFUCG's payment arrangement with the Constructor.
3. The LFUCG agrees to provide a LFUCG maintenance employee to be the local contact to manage the Project with the AOC and the Constructor.
4. The LFUCG agrees to use the construction documents prepared by the Architect, and approved by AOC, as the scope of the Project.
5. The LFUCG agrees to transmit to the AOC for its approval any contract or contract

modification related to the Project. The LFUCG understands and agrees that the AOC will not reimburse the LFUCG for any costs pursuant to any contract or contract modification related to the Project unless the contract or contract modification has first been reviewed and approved by the AOC.

6. The LFUCG agrees that it will submit each change order relating to the Project to the AOC for review and approval prior to execution thereof. The LFUCG understands and agrees that the AOC will not reimburse any costs associated with a change order if the LFUCG fails to comply with this provision.

8. THE LFUCG understands and agrees that the total amount of AOC reimbursement for this Project, including approved change orders, shall not exceed \$800,000.00.

9. The LFUCG agrees to make timely payment to the Constructor and any other contractor(s) the LFUCG may engage to facilitate the completion of the Project.

10. The LFUCG agrees that the AOC will control and approve all assignments of space in the completed Project.

11. The LFUCG shall keep all insurable improvements presently existing, and all insurable improvements to be constructed and located on the completed facility site insured to the full insurable value thereof against fire, flood, tornado, windstorm, and other casualties in good and solvent insurance companies, and the LFUCG shall make said policies available to and payable to the LFUCG and the AOC as their respective interests may appear, or cause said policies to be endorsed in an appropriate manner so that in the event of loss the proceeds thereof will be payable to the LFUCG and the AOC as their interests may appear. In the event that the Project is damaged or destroyed by any casualty, the LFUCG will provide the AOC with proof of the amount of any proceeds received by the LFUCG from any insurer. Such proceeds will first be applied to any bond indebtedness that may remain on the facility, and the LFUCG will relinquish to the AOC its pro rata portion of any remaining proceeds, based on the percentage of the Project that is or is to be occupied by the KCOJ.

II. Length of Contract:

This MOU is effective January 1, 2020 and will expire at the completion of the project.

III. Breach of Contract:

The parties shall bear their own costs associated with disputes as to the rights and responsibilities of the parties under this MOU.

IV. Choice of Law and Forum Provision:

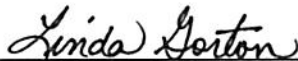
The laws of the Commonwealth of Kentucky will govern all questions as to the execution, validity, interpretation, construction and performance of this MOU. Furthermore, the LFUCG and

the AOC agree that any legal action, which is brought on the basis of this MOU, will be filed in the Franklin County Circuit Court of the Commonwealth of Kentucky.

V. Amendment Clause:

This MOU may be amended by the AOC and the LFUCG as may be necessary. Any such amendment must be made in writing and agreed to by authorized representatives of each party.

WITNESS THE AGREEMENT of the Parties as attested by their signatures affixed hereon.



Authorized Signature Authority
Lexington-Fayette Urban County Government

3/3/2020
Date



Laurie K. Dudgeon, Director
Administrative Office of the Courts

3/13/2020
Date

Approved by:



Carole Henderson, Budget Director
Administrative Office of the Courts

Recommended by:



Danny Rhoades, Executive Officer of Court Facilities
Administrative Office of the Courts

Examined as to form and legality by:



Bethany Atkins Rice, Legal Counsel
Administrative Office of the Courts

Larry Roberts
Fayette County Attorney