

**MEMORANDUM OF UNDERSTANDING
BETWEEN THE
COMMONWEALTH OF KENTUCKY
TRANSPORTATION CABINET
DEPARTMENT OF HIGHWAYS
THE
LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT
AND THE
LEXINGTON COMMUNITY LAND TRUST**

This Memorandum of Understanding is entered into this ____ day of _____, 2013, by and between the Commonwealth of Kentucky, Transportation Cabinet, Department of Highways, The Lexington-Fayette Urban County Government and the Lexington Community Land Trust,

WITNESSETH;

WHEREAS, the Lexington-Fayette Urban County Government (**LFUCG**) and the Department of Highways (**Department**) entered into an agreement on December 13, 2000 (C-00343167) wherein the **Department** was to make available to the **LFUCG** up to \$6,000,000 (80% of the total cost) in federal Transportation Improvement Program funds for the Lexington Urbanized Area and was to provide up to \$1,500,000 (20% local matching funds) from non-federal sources for the **LFUCG** to conduct the planning and design phase, acquire necessary rights-of-way, relocate utilities, provide all environmental analyses, legal analyses, advertise for bids, develop construction contracts and supervise construction of the Newtown Pike extension in the City of Lexington in Fayette County (**Project**); and

WHEREAS, the Federal Highway Administration executed a Record of Decision (“ROD”) on October 11, 2007 which, in part, provided for the mitigation of environmental justice impacts to the Davis Bottom Neighborhood by way of acquiring an area inclusive of 25 acres in the Davis Bottom Neighborhood (Mitigation Area or Subject Property) (see Exhibit 1 to this MOU) and placing it in trust for the benefit of current and future income qualifying residents in order to protect community cohesion and provide for permanently affordable housing; and

WHEREAS, the **Department** and **LFUCG** entered into Supplemental Agreement No. 1 on March 9, 2009 wherein the **Department** provided the **LFUCG** with an additional \$3,975,000 in funds as necessary for completion of design plans, right-of-way appraisals, utility relocation,

and mitigation, which included the establishment of and operating costs for a community land trust, all of which provided for the continuation of this **Project**; and

WHEREAS, these same two parties entered into Supplemental Agreement No. 2 on July 10, 2011 wherein the **Department** provided the **LFUCG** with an additional \$5,088,000 in funds as necessary for additional funding assistance to develop right-of-way and construction plans for Phase II and Phase III of the **Project**, as well as mitigation funding assistance, and additional right-of-way funding for acquisition of parcels by the **Department**; and

WHEREAS, the ROD calls for the acquisition and redevelopment of the Mitigation Area and its subsequent transfer to the **Lexington Community Land Trust (LCLT)**, a Kentucky non-profit corporation pursuant to KRS Chapter 273, created by individuals acting for and on behalf of the **Department** and the **LFUCG**, in accordance with the ROD Decision, with a mission that includes protecting the integrity and viability of the Mitigation Area, it's housing stock, and neighborhood amenities against unwanted and/or detrimental neighborhood impacts as a result of the enhanced Newtown Pike Road Extension and providing opportunities for quality and affordable housing in the Mitigation Area in order to fulfill the requirements of environmental justice mitigation contained in the ROD; and

WHEREAS, the **LFUCG** entered into an agreement with the **LCLT** on April 26, 2010; and

WHEREAS, the individual properties comprising Phase I of the Mitigation Area (identified in Exhibit 2 to this MOU) have been acquired by the **Department** and are ready for transfer to the **LFUCG** for assimilation, redevelopment platting, and subsequent transfer to the **LCLT**:

NOW, THEREFORE, the **LFUCG**, the **Department**, acting on behalf of the Kentucky Transportation Cabinet, and the **LCLT**, do hereby mutually agree to this Memorandum of Understanding as follows:

The Property Transfer:

The **Department** shall transfer by special warranty deed the Subject Property, free of all encumbrances not related to this project, including any unpaid property taxes, to **LFUCG** with the express understanding that **LFUCG** shall then convey the Subject Property, by the same type of deed provided by the Department, to **LCLT** in accordance with the provisions of the ROD. The conveyance by the **Department** to **LFUCG** shall be contingent upon the approval of the Kentucky Finance and Administration Cabinet and the Governor of the Commonwealth.

All parties acknowledge and agree that said special warranty deed shall contain a reversion clause providing that if said property ceases to be utilized for a public use in implementation of the ROD the property shall revert to the **Department**.

LFUCG, prior to transfer of subject property to **LCLT**, shall assemble all individual parcels of the Mitigation Area and plat the new neighborhood as agreed to by the Newtown Pike Extension Project Team.

The **Department** shall compact all fill placed in the Mitigation Area to a level of ninety-eight percent (98%) maximum capacity density.

All parties acknowledge and agree that appropriate restrictions and covenants shall be placed on the property at the time of transfer to **LCLT**.

Environmental Provisions:

The Parties acknowledge and agree that title to the Mitigation Area shall pass from the **Department**, acting on behalf of the Commonwealth of Kentucky, to **LFUCG** “as is” and without warranties beyond those stated herein.

Following the transfer of title, the **Department** shall, at its expense, complete the remediation of known environmental contamination in the Mitigation Area in accordance with the Corrective Action Plan (CAP) approved by the Kentucky Division of Waste Management (KDWM) . The remediation shall be considered complete only when KDWM issues a letter of completion or its equivalent to the Department.

The Parties acknowledge and accept that the CAP provides that environmental contaminants will remain in the soils of the Subject Property following completion of the corrective action. Remaining Contaminants in the Mitigation Area will be managed pursuant to a Site Management Plan acceptable to **LCLT** and approved by KDWM. The SMP shall identify engineering controls and use restrictions sufficient to protect human health and the environment as approved by KDWM and in accordance with KRS Chapter 224.01-400 and other applicable state and federal laws and regulations.

Upon completion of the remediation of the Mitigation Area, the installation of the prescribed engineering controls, and with the final approval of KDWM, the Parties shall enter into an Environmental Covenant as required by KRS Chapter 224.80 that shall place certain

restrictions on the use and development of the Subject Property. The Environmental Covenant shall be in a form agreed to by all Parties and KDWM.

The Environmental Covenant shall be filed in the land records of the Fayette County Clerk and shall thereby run with the land. All future holders in interest, as defined in KRS 224.80-100, in the Mitigation Area will be bound by the restrictions contained within the Environmental Covenant.

Following its receipt of title to the Mitigation Area, the **LCLT**, as its owner, shall notify any and all developers, future owners and lessors of the existence of the requirements of the Environmental Covenant.

Lexington-Fayette Urban County Government

Lexington Community Land Trust

Commonwealth of Kentucky
Transportation Cabinet
Department of Highways

APPROVED AS TO FORM AND LEGALITY:

General Counsel
Office of Legal Services