

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT is made and entered into as of the ____ day of November, 2020 (the “Effective Date”) by and between **KENTUCKY AMERICAN WATER COMPANY** having an address 2300 Richmond Road, Lexington, Kentucky 40502 (hereinafter referred to as “KAWC”), **COLUMBIA GAS OF KENTUCKY** having an address 2001 Mercer Rd., Lexington, Kentucky 40511 (hereinafter referred to as “COLUMBIA GAS”) and the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban-county government pursuant to KRS Chapter 67A, located at 200 East Main Street, Lexington, KY 40507 (hereinafter referred to as “LFUCG”), collectively referred to as the “Parties.”

RECITALS

WHEREAS, LFUCG owns and maintains that portion of the right-of-way identified as Avenue of Champions and Euclid Avenue, located in Lexington, Kentucky; and

WHEREAS, KAWC and COLUMBIA GAS have constructed, replaced and maintained their infrastructure in various locations along Avenue of Champions and Euclid Ave in Lexington, Kentucky; and

WHEREAS, the construction activity by KAWC and COLUMBIA GAS requires the resurfacing of a portion of the right of way on Avenue of Champions and Euclid Ave; and

WHEREAS, LFUCG has a Streetscape project named “Avenue of Champions and Euclid Avenue Multimodal Improvements” with construction plans titled “Avenue of Champions (Section 1), Euclid Avenue (Section 2), Buffered Bike Lanes Striping and Pavement Marking Plan, Lexington, Kentucky”, hereinafter referred to as “Streetscape Project” that requires the resurfacing of a portion of the right of way on Avenue of Champions and Euclid Ave; and

WHEREAS, it would be mutually advantageous to the parties for LFUCG’s Streetscape Project Contractor to resurface the roadway of Avenue of Champions and Euclid Avenue, in accordance with construction plans and specifications approved by LFUCG, and for LFUCG, KAWC and COLUMBIA GAS to each pay their proportionate share of the milling, placement of final asphalt surface and placement of roadway markings, hereinafter referred to as “resurfacing” of Avenue of Champions and Euclid Avenue; and

WHEREAS, KAWC, COLUMBIA GAS and LFUCG have agreed to pay their proportionate share of the resurfacing of Avenue of Champions and Euclid Avenue by the Streetscape Contractor, as set forth herein, and the parties now desire to reduce their agreement to writing.

NOW, THEREFORE, in consideration of the premises and the foregoing mutually agreed upon promises, conditions, and covenants hereinafter set forth, KAWC, COLUMBIA GAS and LFUCG hereby covenant and agree as follows:

(1) **INCORPORATION OF RECITALS.** The above recitals are incorporated herein as if fully set forth.

(2) **AREAS TO BE MILLED/RESURFACED.** The areas to be milled/resurfaced are identified in the construction plans and project specifications for the Streetscape Project identified as the Avenue of Champions and Euclid Avenue Multimodal Improvements, and those construction plans and project specifications are incorporated herein by reference. Resurfacing of disturbed areas is determined by visual inspection of the roadway after excavation and backfilling to the surface is performed. Each party is assigned responsibility for resurfacing the lane(s) that it disturbed. Any undisturbed areas ,as well as any area not disturbed by KAWC or Columbia Gas, are deemed the responsibility of LFUCG. The portion (percentage) of the street that each party is responsible for resurfacing is set forth in the attached table hereto and incorporated herein as **Exhibit A.**

KAWC, COLUMBIA GAS and LFUCG agree that this work shall be constructed and inspected in accordance with the Streetscape Project Construction Plans and Specifications. This work shall be constructed in a good, safe and workmanlike manner in compliance with all applicable codes, ordinances, laws and regulations. The parties agree to cooperate each with the other to expedite the resurfacing of Avenue of Champions and Euclid Avenue.

(3) **COST ESTIMATES AND COST ALLOCATION.** Recognizing that the resurfacing of Avenue of Champions and Euclid Avenue is mutually beneficial to KAWC, COLUMBIA GAS and LFUCG, these parties have agreed to pay their proportionate construction cost associated with the resurfacing as follows:

(a) **Resurfacing of Avenue of Champions and Euclid Ave:** The estimated cost of the Streetscape Project is **SEVEN HUNDRED NINETY-NINE THOUSAND THREE HUNDRED SEVENTY-SIX DOLLARS AND EIGHTY-SIX CENTS (\$799,376.86)** shown by the estimate attached hereto and incorporated herein as Exhibit B. KAWC shall pay **FIFTY-SEVEN THOUSAND ONE HUNDRED FORTY-FIVE DOLLARS AND THREE CENTS (\$57,145.03)**, and COLUMBIA GAS shall pay **TWENTY-NINE THOUSAND EIGHT HUNDRED TWENTY-SEVEN DOLLARS AND FORTY-EIGHT CENTS (\$29,877.48)** as shown by the estimate attached hereto and incorporated herein as Exhibit A.

(b) **Payment method:** KAWC and COLUMBIA GAS shall make their payments to LFUCG.

(4) **CHANGES IN THE WORK; CHANGE ORDERS.** Bid quantities presented in Exhibit B are estimates, and final quantities may vary. After verification of final quantities, a change order from the Streetscape Project contractor shall be approved by LFUCG. KAWC, Columbia Gas and LFUCG shall then each separately pay their respective proportionate share of the total cost of resurfacing Avenue of Champions and Euclid Avenue, using the allocation percentages set forth in Exhibit A.

(5) **COMMENCEMENT DATE; DELAY.** This Agreement will commence on the Effective Date. Time is of the essence in the performance of this Agreement. The work began the week of **NOVEMBER 9, 2020**. The performance period may be extended by agreement of the parties via change order executed by the parties and approved by the Urban County Council.

(6) **TERMINATION.** KAWC and COLUMBIA GAS may only terminate this Agreement due to LFUCG's material breach of the terms hereof which causes KAWC and COLUMBIA GAS to be unable to perform its duties or responsibilities under this Agreement, and only upon thirty (30) days written advance notice to LFUCG by registered or certified mail. LFUCG shall have the right to terminate and cancel this Agreement at any time upon thirty (30) days written notice served on KAWC and COLUMBIA GAS by registered or certified mail.

(7) **DEFAULT.** No party shall be in default under this Agreement unless and until the non-defaulting party shall have given the defaulting party written notice of such default and the defaulting party shall have failed to cure the default within thirty (30) days after written receipt of such notice. Upon the failure by the defaulting party to timely cure any default after notice thereof from the non-defaulting party, the non-defaulting party shall have the right to terminate the Agreement and pursue an appropriate remedy.

(8) **INDEMNIFICATION AND HOLD HARMLESS.** It is understood and agreed by the parties that, to the extent permitted by law, KAWC and COLUMBIA GAS hereby assume 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 KAWC and COLUMBIA GAS, its subcontractors, agents, servants, owners, principals, licensees, or assigns, under or in connection with this Agreement and/or the Streetscape Project related hereto and/or the provision of services and the performance or failure to perform any work required thereby.

KAWC and COLUMBIA GAS shall indemnify, save, hold harmless, and defend LFUCG and its elected and appointed officials, employees, agents, volunteers, and successors in interest from and against any and all liability, damages, and losses, including but not limited to, demands, claims, 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 connect with, or that arise or are alleged to have arisen, directly or indirectly, from or by the performance or breach of this Agreement and/or the Streetscape Project related hereto, 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 KAWC and COLUMBIA GAS; and (b) not caused solely by the active negligence or willful misconduct of LFUCG. These provisions shall in no way be limited by any financial responsibility or insurance requirements, and shall survive any termination of this Agreement.

(9) **BINDING EFFECT.** This Agreement shall be binding upon, and shall inure to the benefit of, the executors, heirs, successors, and assigns of the parties hereto, and no party shall assign, sublet, or transfer its interests in this Agreement without the written consent of the other parties.

(10) **NON-WAIVER.** The failure or delay on the part of KAWC, COLUMBIA GAS, or LFUCG to exercise any right, power or privilege hereunder shall not operate as a waiver thereof.

(11) **ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter contained herein and supersedes all prior offers, negotiations, and other agreements concerning the subject matter contained herein; provided, however, that nothing herein shall be construed or deemed to modify, supersede, or in any way alter or amend the agreement with the Streetscape Contractor for the Avenue of Champions and Euclid Avenue Multimodal Improvements Project. Unless specifically waived herein, all LFUCG ordinances, manuals, rules, regulations, or similar requirements of LFUCG applicable to the subject matter of this Agreement shall control.

(12) **AMENDMENTS.** This Agreement may only be amended by a written agreement of all the parties hereto. No revision of this Agreement shall be valid unless made in writing and signed by an officer of KAWC, an officer of COLUMBIA GAS, and an authorized signatory on behalf of LFUCG.

(13) **GOVERNING LAW; CHOICE OF FORUM.** The laws of the Commonwealth of Kentucky shall govern this Agreement. This Agreement shall be interpreted, applied and enforced according to the fair meaning of its terms and not be construed strictly in favor of or against either party, regardless of which party may have drafted any of its provisions. Any action brought against LFUCG, KAWC, or COLUMBIA GAS on this Agreement, including but not limited to actions either for breach of the agreement or for enforcement of the agreement, shall be brought in a court of appropriate jurisdiction in Fayette County, Kentucky.

(14) **SEVERABILITY.** In the event that any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement.

(15) **NO THIRD PARTY RIGHTS.** Nothing in this Agreement, expressed or implied, is intended or shall be construed to confer upon or give to any person other than the parties hereto any right, remedy, or claim under or by reason of such agreement or covenant, condition, or stipulation herein contained. Nothing expressed or mentioned in or to be implied from this Agreement is intended or shall be construed to give to any person other than the parties hereto any legal or equitable right, remedy, or claim under or in respect to this Agreement. Nothing expressed herein shall be construed or deemed to modify, supersede, or in any way alter or amend the agreement with the Streetscape Contractor for the Avenue of Champions and Euclid Avenue Multimodal Improvements Project.

(16) **NOTICES.** All notices, consents, demands, or other communications required or permitted to be given or made hereunder shall be sufficiently given or made if given in writing, mailed by reliable overnight courier or by Certified Mail, return receipt, in a sealed envelope, postage prepaid, addressed to the following addresses:

LFUCG: Commissioner, Dept. of Environmental Quality and Public Works
Lexington-Fayette Urban County Government
200 East Main Street
Lexington, KY 40507

With
copies to: Commissioner of Law
Lexington-Fayette Urban County Government
200 East Main Street
Lexington, KY 40507

KAWC: KENTUCKY AMERICAN WATER COMPANY
2300 Richmond Rd.,
Lexington, KY 40502

COLUMBIA GAS: COLUMBIA GAS OF KENTUCKY
2001 Mercer Road
Lexington, KY 40511

KAWC, COLUMBIA GAS and LFUCG may from time to time designate any other address for this purpose by written notice to the other Party.

(17) This Agreement may be executed in duplicate counterparts, each of which shall be deemed an original. In the event that any signature is delivered by facsimile or by email of a “.pdf” format data file, such signature shall create a valid and binding obligation of such party with the same force and effect as if such facsimile or “.pdf” signature page were an original thereof.

(18) The execution, delivery and performance of this Agreement and any documents relating hereto have been duly authorized by all necessary parties, and this Agreement is enforceable in accordance with its terms. KAWC, COLUMBIA GAS and LFUCG have full power and authority to enter into this Agreement, to execute and deliver all instruments and documents referred to herein and to consummate the transactions contemplated hereby.

IN WITNESS WHEREOF, the parties by their authorized representative have executed this Agreement as of the Effective Date.

LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT

BY: _____
Linda Gorton, Mayor

ATTEST:

Clerk of the Urban County Council

KENTUCKY AMERICAN WATER COMPANY

BY: Austin Thore
Name: Austin Thore
Title: Engineering Project Manager

ACKNOWLEDGMENT

STATE OF)
)
COUNTY OF FAYETTE)

On the 15TH day of DECEMBER, 2020, before me personally appeared AUSTIN THORE, and acknowledged under oath that he/she is the authorized representative of KENTUCKY AMERICAN WATER COMPANY, and was authorized to execute this Agreement.

My Commission Expires: 05/16/2021



NOTARY PUBLIC #577344

COLUMBIA GAS OF KENTUCKY

BY: 

Name: David W. Lemons

Title: Field Engineer

ACKNOWLEDGMENT

STATE OF)

COUNTY OF FAYETTE)

On the 15TH day of DECEMBER, 2020, before me personally appeared DAVID LEMONS, and acknowledged under oath that he/she is the authorized representative of COLUMBIA GAS OF KENTUCKY, and as such was authorized to execute this Agreement.

My Commission Expires: 05/16/2021

 #577344
NOTARY PUBLIC

Exhibit A

Construction plans titled "Avenue of Champions (Section 1), Euclid Avenue (Section 2), Buffered Bike Lanes Striping and Pavement Marking Plan,

Paving Allocations
11/5/2020 by BCK

		Section totals									
SY	Cost *	KAWC %	KAWC SY	KAWC Cost	C-Gas %	C-Gas SY	C-Gas Cost	LFUCG %	LFUCG SY	LFUCG Cost	
Section 1 - Avenue of Champions											
AOC - Limestone to MLK	3,551.00	20.00%	710.20		0.00%	0.00		80.00%	2,840.80		
AOC - MLK to Rose	5,009.00	25.00%	1,252.25		25.00%	1,252.25		50.00%	2,504.50		
Section 1 Total (aggregate)	8,560.00	22.93%	1,962.45	\$ 46,822.17	14.63%	1,252.25	\$ 29,877.48	62.45%	5,345.30	\$ 177,533.73	
Section 2 Euclid Avenue											
Euclid - Rose to High (includes int of High St)	26,179.00	2.00%	523.58	\$ 10,322.86	0.00%	0.00	\$0.00	98.00%	25,655.42	\$ 505,820.01	
Section 1 and Section 2 Sub-total	34,739.00			\$ 57,145.03			\$29,877.48			\$ 633,353.74	
Streetscape Additions *				\$0.00			\$0.00			\$79,000.60	
Project Total				\$57,145.03			\$29,877.48			\$712,354.34	

* The items associated with the Streetscape Additions (midblock crossing and green colorized pavement demarcations) were removed from the cost prorated between KAWC, C-Gas and LFUCG. They will be added solely to the LFUCG Project totals.

Project Grand-Total	
KAWC Cost	\$57,145.03
C-Gas Cost	\$29,877.48
LFUCG Cost	\$712,354.34
Checks to bid total	\$799,376.85

Exhibit B

L-M Asphalt Partners, Ltd. dba ATS Construction

BID SCHEDULE

AVENUE OF CHAMPIONS AND EUCLID AVENUE

BUFFERED BIKE LANES STRIPING & PAVEMENT MARKING

Item No.	Spec Section	Description	Unit	Quantity	Unit Price	Total Amount Bid
1	1	Construction Staking	LS	1	\$ 4,000.00	4,000.00
2	4	Asphalt Pavement Milling and Texturing	TN	3,840	30.00	115,200.00
3	5	Asphalt Surface	TN	3,822	116.00	443,352.00
3	6	Bituminous Material for Tack	TN	16	0.01	0.16
4	9	Raised Median 8' Wide (Modular)	LF	25.6	550.00	14,080.00
5	3	Sidewalk Ramp #1 (Rt. Station 42+21.70)	LS	1	4,500.00	4,500.00
6	3	Sidewalk Ramp #2 (Lt. Station 42+24.00)	LS	1	5,000.00	5,000.00
7	11	Rapid Rectangular Flashing Beacon Assembly	EA	2	8,000.00	16,000.00
8	10	Extend Existing Raised Median	LS	1	5,000.00	5,000.00
9	7	4" Yellow Stripe	LF	11,271	0.35	3,944.85
10	7	6" White Stripe	LF	9,525	0.50	4,762.50
11	7	6" White Spray Thermoplastic Pavement Stripe	LF	9,739	0.80	7,791.20
12	7	4" White Stripe	LF	1,113	0.35	389.55
13	7	24" Yellow Continuous Line	LF	63	10.00	630.00
14	7	60" Yellow Continuous Line	LF	77	40.00	3,080.00
15	7	Yellow Median Paint (Flush Median Bullet Ends)	SF	212	3.00	636.00
16	7	24" White Stop Bar	LF	484	10.00	4,840.00

BID SCHEDULE**AVENUE OF CHAMPIONS AND EUCLID AVENUE****BUFFERED BIKE LANES STRIPING & PAVEMENT MARKING**

17	7	Cross Walk Striping Striping - 12" -Thermoplastic, Continental	LF	3,074	8.00	24,592.00
18	7	Turn Arrow	EA	42	80.00	3,360.00
19	7	Bike Lane Symbol, with Arrow	EA	39	325.00	12,675.00
20	7	Bike Lane Symbol, no Arrow	EA	4	250.00	1,000.00
21	7	Colorized Pavement Demarcation	SF	1,148	17.95	20,606.60
22	7	Green Thermoplastic	SF	800	10.50	8,400.00
23	7	Buffer Lane Chevron - 6" White Stripe	EA	441	4.00	1,764.00
24	8	W11 - 2 "PEDESTRIAN" Sign (30"x30")	EA	2	404.00	808.00
25	8	W16-9P "AHEAD" Sign (24"x12")	EA	2	303.00	606.00
26	12	KYTC Type V Pavement Marker, Yellow Bi-Directional	EA	181	27.00	4,887.00
27	12	KYTC Type V Pavement Marker, White Mono-Directional	EA	231	27.00	6,237.00
28	B	Maintenance of Traffic	LS	1	27,500.00	27,500.00
29	A	Mobilization (5% Maximum)	LS	1	39,000.00	39,000.00
30	A	Demobilization (1.5% Minimum)	LS	1	12,500.00	12,500.00
31	SC	Performance and Payment Bonds	LS	1	2,235.00	2,235.00
		Total				\$ 799,376.86

Note: On this sheet the Project Bid Tabs were separated in to the two sections shown in the Bid Plans. Then the items associated with the Streetscape Additions (midblock crossing and green colorized pavement demarcations) were removed from the cost prorated between KAWC, C-Gas and LFUCG. They will be added solely to the LFUCG Project cost totals.

**Avenue of Champions and Euclid Multimodal Improvements
Lexington-Fayette Urban County Government
Bid Opening: 2:00 PM Local Time, October 22, 2020
Certified Bid Tabulation - Bid No. 88-2020**

Item No	Description	Unit	Section 1			Section 2		
			Avenue of Champions			Euclid Avenue		
			Quantity	Unit Price	Total Amount Bid	Quantity	Unit Price	Total Amount Bid
1*	Construction Staking	LS	0	\$ 4,000.00	\$ -	0	\$ 4,000.00	\$ -
2	Asphalt Pavement Milling and Texturing	TN	949	30.00	28,470.00	2,891	30.00	86,730.00
3	Asphalt Surface	TN	942	116.00	109,272.00	2,880	116.00	334,080.00
4	Bituminous Material for Tack	TN	4	0.01	0.04	12	0.01	0.12
5*	Raised Median 8' Wide (Modular)	LF	0.0	550.00	-	0.0	550.00	-
6*	Sidewalk Ramp #1 (Rt. Station 42+21.70)	LS	0	4,500.00	-	0	4,500.00	-
7*	Sidewalk Ramp #2 (Lt. Station 42+24.00)	LS	0	5,000.00	-	0	5,000.00	-
8*	Rapid Rectangular Flashing Beacon Assembly	EA	0	8,000.00	-	0	8,000.00	-
9*	Extend Existing Raised Median	LS	0	5,000.00	-	0	5,000.00	-
10	4" Yellow Stripe	LF	2,993	0.35	1,047.55	8,278	0.35	2,897.30
11	6" White Stripe	LF	2,682	0.50	1,341.00	6,843	0.50	3,421.50
12	6" White Spray Thermoplastic Pavement Stripe	LF	3,067	0.80	2,453.60	6,672	0.80	5,337.60
13	4" White Stripe	LF	562	0.35	196.70	551	0.35	192.85
14	24" Yellow Continuous Line	LF	45	10.00	450.00	18	10.00	180.00
15	60" Yellow Continuous Line	LF		40.00	-	77	40.00	3,080.00
16	Yellow Median Paint (Flush Median Bullet Ends)	SF		3.00	-	212	3.00	636.00
17	24" White Stop Bar	LF	188	10.00	1,880.00	296	10.00	2,960.00
18	Cross Walk Striping - 12" Thermoplastic, Continental	LF	1,374	8.00	10,992.00	1,700	8.00	13,600.00
19	Turn Arrow	EA	8	80.00	640.00	34	80.00	2,720.00
20	Bike Lane Symbol, with Arrow	EA	10	325.00	3,250.00	29	325.00	9,425.00
21	Bike Lane Symbol, no Arrow	EA	1	250.00	250.00	3	250.00	750.00
22*	Colorized Pavement Demarcation	SF	0	17.95	-	0	17.95	-
23*	Green Thermoplastic	SF	0	10.50	-	0	10.50	-
24	Buffer Lane Chevron - 6" White Stripe	EA	121	4.00	484.00	320	4.00	1,280.00
25*	W11 - 2 "PEDESTRIAN" Sign (30"x30")	EA	0	404.00	-	0	404.00	-
26*	W16-9P "AHEAD" Sign (24"x12")	EA	0	303.00	-	0	303.00	-
27	KYTC Type V Pavement Marker, Yellow Bi-Directional	EA	37	27.00	999.00	144	27.00	3,888.00
28	KYTC Type V Pavement Marker, White Mono-Directional	EA	70	27.00	1,890.00	161	27.00	4,347.00
29	Maintenance of Traffic	LS	0.5	27,500.00	13,750.00	0.5	27,500.00	13,750.00
30	Mobilization (5% Maximum)	LS	0.5	39,000.00	19,500.00	0.5	39,000.00	19,500.00
31	Demobilization (1.5% Minimum)	LS	0.5	12,500.00	6,250.00	0.5	12,500.00	6,250.00
32	Performance and Payment Bonds	LS	0.5	2,235.00	1,117.50	0.5	2,235.00	1,117.50
	Total				\$ 204,233.39			\$ 516,142.87

Sec 1	\$ 204,233.39
Sec 2	\$ 516,142.87
Sub-total	\$ 720,376.26

Overall bid total	\$799,376.86
less (Sec 1 and Sec 2 sub-total above)	\$720,376.26
Streetscape additions	\$79,000.60

* The items associated with the Streetscape Additions (midblock crossing and green colorized pavement demarcations) were removed from the cost prorated between KAWC, C-Gas and the LFUCG Project. They will be added solely to the LFUCG Project cost totals.