

## **AMENDMENT TO MEMORANDUM OF AGREEMENT**

**THIS AMENDMENT TO MEMORANDUM OF AGREEMENT**, dated this \_\_\_\_\_ of July, 2016, is made and entered into by and between COMMONWEALTH OF KENTUCKY, acting by and through the Secretary of Finance and Administration Cabinet on behalf of the Tourism, Arts, and Heritage Cabinet – Kentucky Horse Park (hereinafter “Commonwealth”), and the LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT (hereinafter “LFUCG”), an urban county government of the Commonwealth of Kentucky pursuant to Chapter 67A of the Kentucky Revised Statutes (the “Government”).

### **WITNESSETH:**

**WHEREAS**, the Commonwealth and LFUCG executed a Memorandum of Agreement on July 13, 2000, pursuant to which LFUCG has been providing sanitary sewer service at the Kentucky Horse Park and for existing public facilities located upon nearby public lands designated as the Spindletop Complex; and

**WHEREAS**, the Memorandum of Agreement was amended on May 29, 2003, to reflect the Commonwealth’s acquisition of additional property contiguous to the Kentucky Horse Park, by incorporating that contiguous property into the Service Area described in the Memorandum of Agreement; and

**WHEREAS**, following a fire at the former site of the Bluegrass Stockyards, an agricultural stockyards operation located in Lexington-Fayette County, Bluegrass Stockyards, LLC has proposed to relocate the agricultural stockyards operation to a property on Iron Works Pike that is contiguous with Interstate 75 and adjacent to the Kentucky Horse Park, and located in Lexington-Fayette County; and

**WHEREAS**, Bluegrass Stockyards, LLC has requested to connect the proposed site to the sanitary sewer transmission facilities that serve the Kentucky Horse Park, which were installed by the Commonwealth and dedicated to LFUCG pursuant to the aforementioned Memorandum of Agreement; and

**WHEREAS**, the Commonwealth and LFUCG are willing to allow this connection, provided that Bluegrass Stockyards, LLC shall be treated by LFUCG as a private, separate entity that is individually billed for its sanitary sewer service, because relocation of the Bluegrass Stockyards to the proposed site in Lexington-Fayette County promotes the public purposes of economic development and protection of the local agricultural economy, and in consideration of the economic benefits bestowed upon the local agricultural economy by the continuation of the agricultural stockyards operation in Lexington-Fayette County; and

**WHEREAS**, the Commonwealth and LFUCG have determined that the Memorandum of Agreement should be amended in order to authorize Bluegrass Stockyards, LLC, to connect to the aforementioned transmission facilities.

**NOW, THEREFORE**, for and in consideration of the premises, mutual undertakings and agreements contained herein, the Commonwealth and LFUCG hereby covenant and agree as follows:

1. The above recitals are incorporated herein by reference as if fully stated.
2. That numbered paragraph 2 of the Memorandum of Agreement (“**SERVICE AREA**”), which was amended on May 29, 2003, be and hereby is amended to add the following sentence at the end of numbered paragraph 2:

The Service Area shall be modified to also include a Private Service Area, which are those privately owned lands located on Iron Works Pike, contiguous to Interstate 75 and adjacent to the Kentucky Horse Park, as shown on the attached Exhibit B, which is attached hereto and incorporated herein by reference as if set out fully herein, provided that such privately owned lands are used for an agricultural purpose, i.e., an agricultural stockyards operation, in order to further and promote the public purposes of economic development and preservation of the local agricultural economy.

3. That numbered paragraph 6 of the Memorandum of Agreement be and hereby is amended to read as follows:

6. **ADDITIONAL CONNECTIONS.** Commonwealth and LFUCG agree that the Transmission Facilities are to provide service only to publicly owned land within the Service Area, and to the Private Service Area where those privately owned lands are used for an agricultural purpose, i.e., an agricultural stockyards operation, in order to further and promote the public purposes of economic development and preservation of the local agricultural economy; provided, however, that all collection, conveyance, and pumping facilities necessary to provide service to the Private Service Area shall be privately owned, operated, and maintained, and further provided that the individual sewer users, various users, and facilities within the Private Service Area shall be treated by LFUCG as private and separate sewer users, entities, and facilities and LFUCG shall individually bill those individual sewer users, various entities, and facilities within the Private Service Area for sanitary sewer service provided. No service connections or use, direct or indirect, shall be made to the Transmission Facilities from outside the delineated Service Area or the Private Service Area. All sewer service connections within the Service Area and the Private Service Area shall be subject to the following conditions:

- (a) Approval by the Commonwealth of Kentucky acting by and through the Secretary of Finance and Administration Cabinet and the LFUCG.
- (b) Six months prior notification to LFUCG of proposed additional connections or expansions to existing facilities. The notice and application for approval shall provide proposed buildings and facilities

plans and calculation of additional flows. Further, approval will be subject to the plan approval, engineer certification and inspection and acceptance process set forth in paragraph 4, above.

(c) Payment to the LFUCG for the impact of the additional connection and flow to the LFUCG system. The amount of each such contribution shall be calculated upon the basis set forth in LFUCG Code of Ordinances, Section 16-60 or any revisions and/or amendments thereto.

(d) In no event shall the flows from the Service Area and the Private Service Area exceed the maximum projected flows.

4. That numbered paragraph 9, subsection (c) of the Memorandum of Agreement be and hereby is amended, expressly providing that the Kentucky Horse Park and the Commonwealth shall have no obligation to allocate and collect charges from the individual sewer users, various entities, and facilities within the Private Service Area, to read in its entirety as follows:

(c) LFUCG will calculate and bill the sewer user fee and odor control chemical costs on a monthly basis and will direct the bill to the Kentucky Horse Park – Division of Support Services – Accounts Payable Department, 4089 Ironworks Parkway, Lexington, KY 40511, and the Commonwealth shall remit one payment for each monthly billing and shall retain responsibility for allocating to and collecting charges from the various entities and facilities within the Service Area; provided, however, that as to those individual sewer users, various entities, and facilities within the Private Service Area, LFUCG will calculate and bill the sewer user fee and odor control chemical costs on a monthly basis and will direct the bill to the individual sewer users, various entities, and facilities within the Private Service Area, with such billing to be based on sanitary sewer discharge, measured by a flow meter at the private user's lift pump, as an accurate measure of sanitary sewer use by the individual sewer users, various entities, and facilities within the Private Service Area. Unpaid sewer user fees shall be subject to late penalty and interest as set forth in KRS 45.454. LFUCG shall be entitled to recover all costs of collection including a reasonable attorney's fee.

5. That Exhibit B, attached hereto and incorporated herein by reference, is hereby attached to the Memorandum of Agreement, and is incorporated into the Memorandum of Agreement by reference.

6. That in all other respects, except as specifically modified herein, the terms and conditions of the original Memorandum of Agreement, dated July 13, 2000, and as amended on May 29, 2003, shall remain in full force and effect.

**IN WITNESS WHEREOF**, this contract is subject to the terms and conditions stated herein. By affixing signatures below, the parties verify that they are authorized to enter into this contract, that they accept and consent to be bound by the terms and conditions stated herein, have signed and executed this Amendment to Memorandum of Agreement at

Lexington, Kentucky the date and year first written above. In addition, the parties agree that (i) electronic approvals may serve as electronic signatures, and (ii) this contract may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute a single contract.

**ACKNOWLEDGED AND AGREED TO:**

\_\_\_\_\_  
LAURA S. PREWITT  
EXECUTIVE DIRECTOR  
KENTUCKY HORSE PARK

\_\_\_\_\_  
DON PARKINSON, SECRETARY  
TOURISM, ARTS, AND HERITAGE  
CABINET, COMMONWEALTH OF KY

  
\_\_\_\_\_  
WILLIAM M. LANDRUM III  
SECRETARY  
FINANCE AND ADMINISTRATION  
CABINET, COMMONWEALTH OF KY

\_\_\_\_\_  
JIM GRAY  
MAYOR  
LEXINGTON-FAYETTE URBAN  
COUNTY GOVERNMENT

**APPROVED AS TO FORM AND LEGALITY:**

  
\_\_\_\_\_  
PATRICK MCGEE  
COUNSEL  
FINANCE AND ADMINISTRATION  
CABINET, COMMONWEALTH OF KY

\_\_\_\_\_  
B. LEIGH POWERS  
GENERAL COUNSEL  
TOURISM, ARTS, AND HERITAGE  
CABINET, COMMONWEALTH OF KY

\_\_\_\_\_  
ATTORNEY  
LEXINGTON-FAYETTE URBAN  
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**ATTEST:**

\_\_\_\_\_  
CLERK OF THE URBAN  
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COUNSEL  
FINANCE AND ADMINISTRATION  
CABINET, COMMONWEALTH OF KY



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TOURISM, ARTS, AND HERITAGE  
CABINET, COMMONWEALTH OF KY

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