

AGREEMENT

BETWEEN

Lexington-Fayette Urban County Government

AND

JFG Enterprises, Inc.

THIS AGREEMENT is made and entered into at Lexington, Kentucky this ____ day of _____, 2014, between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government pursuant to authority of Kentucky Revised Statutes Chapter 67A (hereinafter referred to as “LFUCG”) and **JFG ENTERPRISES, INC.**, a Kentucky corporation (hereinafter referred to as “JFG”).

WHEREAS, On January 3, 2011, LFUCG, the United States Environmental Protection Agency, and the Commonwealth of Kentucky entered into a Consent Decree in a case styled *United States of America, et al. v. Lexington-Fayette Urban County Government*, United States District Court for the Eastern District of Kentucky, Case No. 5:06-CV-00386 (“Consent Decree”), that requires, among other things, the construction by LFUCG of a sewage pumping station and sanitary sewer force main to allow the properties currently in the Blue Sky Rural Activity Center located in the North East and South East quadrants of the I-75 and Athens Boonesboro Road Interchange (collectively, the “Two Eastern Quadrants”), which properties are or can be served by the Blue Sky Wastewater Treatment Plant (“Blue Sky Plant”), to connect to LFUCG’s sanitary sewerage system ; and

WHEREAS, In furtherance of the Consent Decree, on January 12, 2012, LFUCG acquired ownership of the Blue Sky Plant and sewerage system, which it had previously been

operating as a receiver appointed by the Franklin Circuit Court, in Civil Action No. 01-CI-01262, styled *Natural Resources and Environmental Protection Cabinet v. Blue Sky Sewer Co.*

WHEREAS, the Consent Decree further requires LFUCG to construct the aforementioned force main in a manner to accommodate the eventual elimination of the Boonesboro Manor Wastewater Treatment Plant (“Boonesboro Manor Plant”) owned by JFG, which plant serves properties owned by JFG and others located within the current boundaries of the Blue Sky Rural Activity Center in the North West and South West quadrants of the I-75 and Athens Boonesboro Road Interchange (collectively, the “Two Western Quadrants”); and

WHEREAS, LFUCG has determined that it is in the public’s best interest to construct a sewage pumping station and force main that will accommodate full development under current zoning of all properties currently in the Blue Sky Rural Activity Center; and

WHEREAS, LFUCG has determined and JFG accepts that, in order to comply with the full development goal (i) the sewage pump station to replace the Blue Sky Plant will require a designed capacity of 800 gpm (“Blue Sky Pump Station”), (ii) the sewage pump station and force main to replace the Boonesboro Manor Plant will ultimately require a pump station with a design capacity of 500 gpm (“Boonesboro Manor Pump Station”), and (iii) the force main connecting these two pump stations necessary to serve the properties in the Blue Sky Rural Activity Center will require a minimum capacity of 1,300 gpm using customary engineering practices (“Blue Sky Force Main”); and

WHEREAS, JFG owns all the property in the Blue Sky Rural Activity Center located in the Two Western Quadrants except for (i) the Speedway Convenience Store located at 5360 Athens Boonesboro Road, (ii) the Marathon Convenience Store located at 5350 Athens Boonesboro Road and (iii) a vacant lot located at 5355 Athens Boonesboro Road; and

WHEREAS, the Boonesboro Manor Plant, together with the sewerage collection system, are owned and operated by JFG; and

WHEREAS, the Boonesboro Manor Plant currently treats sewage from the Speedway Convenience Store, the Marathon Convenience Store and a Wendy's Restaurant located at 5356 Athens Boonesboro Road, which Restaurant is operated by a Wendy's franchisee, with land and building owned by JFG; and

WHEREAS, upon the terms and conditions contained herein, JFG has determined that it will construct the Boonesboro Manor Pump Station and the connecting force main in order to facilitate the elimination of the Boonesboro Manor Plant; and

WHEREAS, the parties have agreed to enter into this Agreement setting forth matters pertaining to (i) JFG's design and construction of the Boonesboro Manor Pump Station and the connecting force main, (ii) certain matters regarding the Blue Sky Force Main, (iii) reservation of sewer capacity in LFUCG's sanitary sewerage collection and treatment system for properties utilizing the Boonesboro Manor Pump Station, which reservation of sewer capacity as herein provided, is consistent with LFUCG's approved Sanitary Sewer Capacity Assurance Program ("Capacity Assurance Program" or "CAP"), (iv) connection of the Boonesboro Manor Pump Station and JFG's sewerage collection system to LFUCG's sanitary sewerage collection system, (v) dedication of the Boonesboro Manor Pump Station, JFG's connecting force main and JFG's sewerage collection system to LFUCG and acceptance of such dedication by LFUCG;

NOW, THEREFORE, in consideration of the foregoing premises and in consideration of the mutual undertakings and obligations hereinafter set forth, the parties agree to the following covenants and conditions:

1. Blue Sky Pump Station and Blue Sky Force Main Completion Date. LFUCG shall complete construction of the Blue Sky Pump Station and Blue Sky Force Main in a time period that is in compliance with the Consent Decree.

2. Blue Sky Force Main Route. The Blue Sky Force Main shall traverse JFG's property as shown on Exhibit A, attached hereto and incorporated herein by reference.

3. Design.

(a) The Boonesboro Manor Plant has a 70,000 gpd average design capacity and currently receives approximately 4,000 gpd. Due to the current low flows of 4,000 gpd and the expected, increasing flows as future development occurs, a phased approach to the design and construction of the Boonesboro Manor Pump Station will be implemented. The anticipated Phases, which are subject to modification as herein provided, are as follows:

Phase I: JFG shall contract with a qualified engineer for the design of the Boonesboro Manor Pump Station and connecting force main. A wet well will be constructed and two 80 gpm pumps will be installed in the wet well and connected to the Blue Sky Force Main by a 6 inch force main sufficient to handle current sewer flows. Other site improvements, including two large wet wells, a valve vault, generator pad, valves, piping, and any other necessary improvements, will be constructed to permit future upgrades anticipated in Phases II, III and IV without additional site work.

Phase II: The two 80 gpm pumps installed with Phase I will be replaced with two 120 gpm pumps, which pumps will continue to utilize the wet well, pump controls, systems and piping referenced in Phase I.

Phase III: The two large wet wells and valve vault constructed in Phase I will be utilized with the addition of two 250 gpm pumps, one for each large wet well. Other

improvements, including a larger 8 inch force main, if so required pursuant to the Lexington-Fayette Urban County Government Engineering Manual (“Engineering Manual”), will be installed to connect the larger pumps to the Blue Sky Force Main as provided in paragraph 5. A generator will also be added utilizing the generator pad constructed in Phase I. The pumps referenced in Phase I or Phase II, whichever are in use at the time, will be removed along with all controls for those pumps, and will become the property of LFUCG.

Phase IV: The two 250 gpm pumps referenced in Phase III will be replaced by two 500 gpm pumps. The two 250 gpm pumps will become the property of LFUCG.

(b) The above description of the four phases is intended only as a general outline of the anticipated Phases and the anticipated work, material and equipment required for each Phase. Details for Phase I, as stated above or as modified, will be set forth in the Plans identified in paragraph 4.

(c) The design and phasing of the work will allow the Boonesboro Manor Pump Station to be upgraded as and when flows so dictate to a pumping capacity of 500 gpm peak flows. In reaching the Phase IV peak pumping capacity of 500 gpm, all phases may be modified and/or Phases II and/or III skipped altogether if flows or anticipated flows so require. Provided, however (i) if Phase I is modified from that stated above, all site improvements stated for Phase I must still be constructed during Phase I, (ii) if Phase III is skipped, then the larger 8 inch forced main referenced at Phase III, if required as stated here, shall be installed in Phase IV, and (iii) no modification to Phase IV shall increase the pumping capacity beyond 500 gpm. The final upgraded pump station capable of pumping 500 gpm, subject to the provisions of Paragraph 10, is projected to accommodate JFG’s property and the other properties in the Boonesboro Rural Activity Center located in the Two Western Quadrants, assuming for purposes of this Agreement

those properties have been fully developed under current Interchange Service Business (B-5P) Zoning.

4. Design Approval.

(a) The design, drawings, plans and specifications, and inspection requirements for the construction of Phase I of the Boonesboro Manor Pump Station, as stated or as modified pursuant to paragraph 3(c), and the connecting force main (the “Plans”) shall be in accordance with the requirements of the Engineering Manual. Prior to the commencement of construction of Phase I, the Plans shall be approved by the LFUCG Division of Engineering, Division of Water Quality and the Commonwealth of Kentucky, Division of Water. LFUCG agrees to promptly review the Plans and promptly notify JFG of any changes required thereto;

(b) During a period beginning with the date of this Agreement and ending 18 months after the Blue Sky Pump Station and Blue Sky Force Main have been placed in service and are fully operational, JFG shall submit the Plans to the LFUCG, through its Divisions of Engineering and Water Quality, for its approval referenced above. After the LFUCG has approved the Plans, JFG shall submit the Plans to the Commonwealth of Kentucky, Division of Water for its approval referenced above; and

(c) If required, plans for subsequent Phases will be prepared by JFG at its cost and submitted for approval the same as provided in subparagraph (a) above for Phase I.

5. Connector to Blue Sky Force Main. In constructing the Blue Sky Force Main, LFUCG shall provide an appropriate 8-inch “tee” and 8-inch valve connection in the Blue Sky Force Main to be located as shown on Exhibit B. This tee and valve will be utilized in connecting the force main from the Boonesboro Manor Pump Station to the Blue Sky Force Main.

6. Completion of Boonesboro Manor Pump Station and Connecting Force Main.

JFG intends to complete construction of Phase I of the Boonesboro Manor Pump Station and connecting force main within a time period commencing with the date the Plans referenced in paragraph 4(a) are fully approved by the LFUCG and the Commonwealth of Kentucky and extending for a reasonable period of time thereafter, but not less than three (3) years. As further provided in paragraph 16, the obligation to construct the Brownsboro Manor Pump Station and connecting force main as herein provided is binding on the successors to JFG.

7. Costs.

(a) JFG is responsible for all costs related to the initial design and construction of Phase I of the Boonesboro Manor Pump Station and connecting force main to the 8-inch valve mentioned in paragraph 5.

(b) Thereafter all the cost of upgrading the Boonesboro Manor Pump Station provided in paragraph 3 and any necessary increase in size of the connecting force main mentioned in paragraph 3, shall be paid by JFG, with the work to be contracted by LFUCG, provided however, in the event LFUCG cannot accomplish the upgrade in a timely manner, then the upgrade may be made by JFG at JFG's cost.

(c) All cost of work contracted by LFUCG and to be paid by JFG, referenced in subparagraph (b) above, shall be obtained through LFUCG's normal bidding process.

8. Erosion Prevention and Sedimentation Control. JFG shall insure that all contractors utilized in the construction follow all applicable erosion prevention and sediment control guidelines, and in that regard JFG shall submit plans ("Erosion Plans") to LFUCG for review and approval as required by Code of Ordinances of LFUCG. The Erosion Plans shall be submitted to LFUCG for its approval at the same time JFG submits the Plans for approval as

provided in paragraph 4(b). LFUCG agrees to promptly review the Erosion Plans and promptly notify JFG of any changes requested thereto.

9. Access Easement and Boonesboro Manor Pump Station Site.

(a) JFG shall grant LFUCG a non-exclusive access easement to the Boonesboro Manor Pump Station by metes and bounds description, which shall utilize portions of the existing road from Athens Boonesboro Road to the Boonesboro Manor Plant. The road is currently partially paved and partially gravel. JFG shall not be required to make improvements to this access, except it will make reasonably necessary improvements to the gravel section that will connect the Boonesboro Manor Pump Station site to the paved portion of the road and such improvements may involve a relocation of a portion of the existing gravel section of the Road. After said improvements, the gravel section of the road shall, at a minimum, be equivalent to a construction site entrance as described in the Engineering Manual. The easement shall specifically provide that LFUCG's use of the easement shall not be prevented, blocked or obstructed in any manner, except for gates locked in a manner that will provide keyed access by LFUCG. Access as used herein shall include ingress and egress.

(b) JFG, at its cost, shall have the right in the future to relocate this non-exclusive access easement, provided (i) the new access provides as good or better access to the Boonesboro Manor Pump Station site with such access, at a minimum, being equivalent to a construction site entrance as described in the Engineering Manual, (ii) during any such relocation, LFUCG shall continue to have adequate unobstructed access to the Boonesboro Manor Pump Station and (iii) JFG grants a new non-exclusive easement by metes and bounds description for the easement as relocated. This new non-exclusive easement, like the old easement, shall provide that LFUCG's use of the easement shall not be prevented, blocked or obstructed in any manner, except as

provided in subparagraph (a) above. Upon any such relocation, the LFUCG shall release its easement for the prior access.

(c) JFG shall convey the Boonesboro Manor Pump Station site to LFUCG by fee simple deed. If a fee simple deed is not feasible, JFG shall grant LFUCG a permanent exclusive easement for the site, which shall be in addition to the non-exclusive access easements to the site provided in this paragraph 9. The location and size of the site shall be as shown on Exhibit C attached hereto and incorporated herein by reference.

(d) JFG shall grant to LFUCG a permanent sanitary sewer easement, by metes and bounds description, for the force main connecting the Boonesboro Manor Pump Station to the Blue Sky Force Main.

(e) The non-exclusive access easement provided in paragraph 9(a), the Deed or permanent exclusive easement for the Boonesboro Manor Pump Station site, as the case may be, provided in paragraph 10(c) and the force main sewer easement provided in paragraph 10(d), shall be granted by JFG to the LFUCG at the same time as the dedications and conveyances provided in paragraph 14.

10. Reserved Capacity.

(a) Upon completion of the Blue Sky Pump Station and Blue Sky Force Main, LFUCG agrees to accept and treat, in LFUCG's sanitary sewerage collection and treatment system, sewage from JFG's Property and the other properties located in the Two Western Quadrants. Provided, however, the maximum peak flows allowed at the Boonesboro Manor Pump Station from those properties after all upgrades have been completed is 500 gpm, which is 720,000 gpd, which, using a peaking factor of 4.6, equates to an average daily flow of 156,521 gpd with peak flows in no event exceeding 500 gpm, the ultimate Design Capacity of the

Boonesboro Manor Pump Station. The right to discharge sewage provided herein shall be 24 hours per day, 7 days per week.

(b) LFUCG shall not allow sewage flows in the Blue Sky Forced Main from any property or properties not served by the Boonesboro Manor Pump Station to reduce capacity in the Blue Sky Force Main below that necessary to provide the 500 gpm allocated to JFG's properties and the other properties in the Two Western Quadrants and the 800 gpm allocated to the Two Eastern Quadrants.

(c) If a zone change is obtained for any of the properties in the Two Western Quadrants, the capacities reserved herein and obligations of the LFUCG in this Agreement shall remain the same.

11. Tap On Fees.

(a) No tap-on fees or other fees related to the connection of JFG facilities to the LFUCG sanitary sewer system will be applied to Parcel ID numbers 26431100 (currently Marathon), 21968045 (currently Speedway), or 26426075 (currently Wendy's) provided that there are no expansions of the existing structures located on those parcels or no changes to a different use of those existing structures or both, which would result in an increase of average annual sanitary sewer discharges. Tap on fees can be imposed by LFUCG if an existing user makes changes to an existing structure that results in an increase of average annual sanitary sewer discharges.

(b) A tap on fee can be imposed when a new property in either of the Two Western Quadrants taps onto the sewerage collection system to be owned and operated by the LFUCG as herein provided.

(c) Any tap-on fees referenced in subparagraphs (a) and (b) of this paragraph 11 shall not exceed those normally imposed pursuant in Chapter 16, Section 16-60 of the Code of Ordinances of the LFUCG and applicable at the time of the tap-on for the type of use made of the property to which the tap-on pertains.

12. Use of Capacity.

(a) For each future connection to the sewage collection system served by the Boonesboro Manor Pump Station, the sewage flows for the use proposed will be estimated. These estimated flows will be based on generally accepted engineering criteria for the type of use. These estimated flows will be compared to the measured average daily flows and measured peak flows then being received at the Boonesboro Manor Pump Station. This comparison, together with the status of the upgrades to the Boonesboro Manor Pump Station mentioned in paragraph 3, will be used to determine if a sufficiency of the sewer capacity reserved in paragraph 10 remains to accommodate the proposed connection.

(b) Average daily flows and peak flows at the Boonesboro Manor Pump Station for purposes set forth above and for all other purposes will be based on actual measured flows received at the pump station. A flow meter will be installed by JFG to LFUCG standards in the force main connecting the Boonesboro Manor Pump Station force main to measure said flows.

(c) As provided in paragraph 10, the maximum peak flows allowed at the Boonesboro Manor Pump Station after all upgrades have been completed is 500 gpm, which is 720,000 gpd which, using a peaking factor of 4.6, equates to an average daily flow of 156,521 gpd. When average measured flows approximates 156,521 gpd, but actual measured flows show that the actual peaking factor is less than 4.6, then allowed average daily flows can be reasonably

increased above 156,521 gpd, but, in no event, can such increased flows (i) exceed the 500 gpm ultimate design capacity of the Boonesboro Pump Station or (ii) violate the provisions of CAP.

13. No Additional Charges to JFG. JFG has agreed herein to incur significant costs for facilities to be given and dedicated to LFUCG. In consideration thereof, LFUCG, for the rights and privileges granted JFG herein, shall not now or in the future impose any cost recovery plan or any other charge of whatsoever nature and kind against JFG or JFG's properties or any other property in the Two Western Quadrants relating to any improvement necessary for LFUCG to meet its obligations as set forth herein.

14. Dedication.

(a) Upon completion of Phase I of the Boonesboro Manor Pump Station and connecting force main ("New Facilities"), JFG shall immediately dedicate and convey the New Facilities to LFUCG, by deed or permanent exclusive easement as provided in paragraph 9(c). However, prior to such dedication and conveyance, the New Facilities will be tested, at JFG's expense, in accordance with the Engineering Manual. LFUCG shall have the right to perform an inspection of the condition of the New Facilities prior to accepting such conveyance and dedication. LFUCG agreed to promptly conduct such inspection. After such testing and inspection, any repairs that are required to make the New Facilities functional and in good operating condition shall be made and paid for by JFG. Following the inspection and completion of any necessary repairs to the New Facilities in accordance with the Engineering Manual requirements, LFUCG agrees to immediately accept the conveyance and dedication of the New Facilities as provided in this paragraph 14(a) and the Existing Sewerage System, as provided in paragraph 14(d), and shall thereafter own, maintain and operate both the New Facilities and Existing Sewerage System, subject to the terms and conditions of this Agreement.

(b) The testing of the New Facilities provided in paragraph 14(a) shall not require JFG to operate the New Facilities for a period longer than necessary to establish that the New Facilities are functional and in good operating condition as provided in paragraph 14(a).

(c) Upon such dedication of the New Facilities, JFG shall assign to LFUCG any and all warranties regarding labor, materials and equipment it has or is entitled to, that pertain to the construction of the Boonesboro Manor Pump Station and connecting force main.

(d) At the same time the New Facilities are dedicated and conveyed to LFUCG, JFG shall convey to LFUCG, as herein provided, its existing sewerage collection system in its "as is" condition and all easements associated therewith ("Existing Sewerage System"). Regarding sewer lines comprising a portion of the Existing Sewerage System that are within easements shown on recorded plats ("Recorded Easements"), these Recorded Easements and sewer lines therein shall be dedicated and conveyed by JFG to LFUCG by referring to said plats for the description of same. Regarding sewer lines comprising a portion of the Existing Sewerage that are not within easements shown on any recorded plat and are located on property owned by JFG, JFG agrees that (i) those sewer lines shall belong to LFUCG and (ii) LFUCG shall have an easement ten (10) feet on both sides of the centerline of said sewer lines for the purposes of operating, repairing and maintaining, and, if necessary, replacing said sewer lines. If the distance from the centerline of any such sewer line to an adjoining property, not owned by JFG, is less than 10 feet, then the distance from the centerline to the adjoining property shall apply. Such agreement, regarding sewer lines not within the Recorded Easements, shall become effective, as stated above, when the New Facilities are dedicated and conveyed to the LFUCG.

15. Binding Effect. This Agreement shall be binding upon, and shall inure to the benefit of the parties and their respective successors and assigns. Nothing herein shall be

construed as creating any individual personal liability on the part of any officer, director, employee or agent of JFG or LFUCG. Upon completion of the New Facilities and the dedication provided for in paragraph 14, JFG shall have the right to assign its rights herein without LFUCG's consent. LFUCG shall not have the right to assign its interest and obligations herein without the written consent of JFG, its successors and assigns. If JFG sells or otherwise transfers its property in the Blue Sky Rural Activity Center, other than subdivided lots, prior to the elimination of the Boonesboro Manor Plant, JFG specifically agrees that as part of the transfer the transferee shall, by contract among JFG, LFUCG, and the transferee, be required to comply with all terms and provisions of this Agreement.

16. Entire Agreement. This Agreement embodies the whole agreement of the parties as to matters addressed herein. As to those matters, there are no promises, terms, conditions or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations or agreements, either verbal or written, among the parties and no part of this agreement may be altered, modified, or changed in any way except in writing signed by the parties hereto or signed by the duly authorized representatives of said parties. Unless in conflict with the provisions of this Agreement, all LFUCG ordinances, manuals, including, without limitation, the Engineering Manual, rules or regulations, or similar requirements of LFUCG applicable to the subject matter of this Agreement shall control. If in conflict with the provisions of this Agreement, the conditions of this Agreement shall control.

17. Severance. If any section, clause or provision of this Agreement shall be held invalid, such holding of invalidity shall not affect the validity of any remaining section, clause, paragraph, portion or provision of this Agreement, unless such invalidity materially impacts the underlying intent of the parties as evidenced by this Agreement.

18. Third Party Beneficiaries. 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 any right, remedy or claim under or by reason of any such agreement or any covenant, condition or stipulation herein or therein contained. Provided however, upon completion of the New Facilities and the dedication and acceptance provided in paragraph 14, the obligations of LFUCG shall inure to the benefit of the owners of the property in the Two Western Quadrants, their successors in interest as well as successors in title, and shall be fully enforceable by any of such property owners.

19. Amendments. This Agreement may only be amended by written agreement of all the parties hereto.

20. Governing Law. The laws of the Commonwealth of Kentucky shall govern the validity, construction, and performance of this Agreement.

21. Notices. All notices, consents, or other communications required or permitted hereunder shall be deemed sufficiently given or serviced if given in writing, mailed by first class mail, postage prepaid and addressed as follows:

(i) If to LFUCG:

Director, Division of Water Quality
Tate Building
125 Lisle Industrial Avenue, Suite 180
Lexington, KY 40511

(ii) If to JFG:

Earl S. Wilson, Jr., President
JFG Enterprises, Inc.
131 Prosperous Place, Suite 20-B
Lexington, KY 40509

Either party may change its address or a designated individual or both to receive notice by giving notice, as herein provided, to the other party.

22. Limitation of Rights. With the clear exception of rights expressly conferred herein, including without limitation in paragraphs 15 and 18, 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.

IN WITNESS WHEREOF, the parties hereto executed this Agreement on the day and year first above written.

JFG ENTERPRISES, INC.

BY: Earl S. Wilson, Jr.
Earl S. Wilson, Jr., President

STATE OF KENTUCKY

COUNTY OF FAYETTE

The foregoing instrument was acknowledged before me by Earl S. Wilson, Jr., as President of JFG Enterprises, Inc., a Kentucky corporation, on behalf of said corporation, on this 3rd day of July, 2014.

My Commission expires: April 1, 2017

Karen M. Gynan
NOTARY PUBLIC

LEXINGTON-FAYETTE URBAN COUNTY
GOVERNMENT

BY: _____
Jim Gray, Mayor

STATE OF KENTUCKY

COUNTY OF FAYETTE

The foregoing instrument was acknowledged before me by Jim Gray, as Mayor of the City of Lexington, a _____, on behalf of said _____, on this ____ day of _____, 2014.

My Commission expires: _____

NOTARY PUBLIC

ATTEST:

Clerk of Urban County Council

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