

AGREEMENT

THIS AGREEMENT, made and entered into on the 29<sup>th</sup> day of January, 2015, by and between the LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, an urban county government of the Commonwealth of Kentucky, created pursuant to KRS Chapter 67A (hereinafter "Government") and the LEXINGTON AND FAYETTE COUNTY PARKING AUTHORITY (hereinafter "Authority"), with offices located at 101 East Vine Street, Lexington, Kentucky 40507.

WHEREAS, the Authority was created to handle various public parking issues for the Government pursuant to Article XIII, Chapter 2 of the Code of Ordinances, Lexington-Fayette Urban County Government; and

WHEREAS, the parties wish to clarify certain aspects of their ongoing relationship through entering into this formal Agreement.

WITNESSETH:

That for and in consideration of the mutual promises and covenants herein expressed, the Government and the Authority agree as follows:

1. This Agreement shall be for an initial term of two years commencing on an effective date of July 1, 2014. This agreement shall automatically continue to renew for additional periods of two years unless either party provides advance written notice to the other party of at least ninety (90) days indicating that it shall not renew the Agreement. In the event of a breach of the terms of this Agreement, either party shall have the right to terminate this Agreement, but only upon providing the other party with

written notice of those items constituting the breach and further providing the breaching party with at least sixty (60) days to cure the violations.

2. Pursuant to Section 2-179, Code of Ordinances, Lexington-Fayette Urban County Government (the "Ordinance"), the Authority agrees to provide the following services throughout Fayette County, as requested by the Government, with particular focus on the downtown area:

(a) Install, lease, construct, maintain, manage, operate, repair, acquire, and control all parking meters (including bagging other than Special Events bagging by the LFUCG Division of Police) in the urban-county area, on behalf of the Government;

(b) In conjunction with the Lexington-Fayette Urban County Division of Police, enforce all non-moving traffic violations associated with such meters and on street parking;

(c) Manage and enforce the residential parking permit program within the urban-county area;

(d) Provide support staff for the LFUCG Parking Citation Enforcement Hearing Board established pursuant to Sec. 18-170 of the Code of Ordinances;

(e) Study the need for new parking facilities and structures within the urban-county area and report the results to the urban-county council;

(f) As requested by Government, study the need for parking spaces to be provided without charge to certain classes of users within one or more

districts of the urban-county and report the results of such study to the urban-county council;

(g) Assist the urban-county council with respect to local parking districts as follows:

(1) Establish local parking districts and identify parking facilities or structures to be acquired or constructed;

(2) Assist the urban-county council in the establishment of plans of assessment or taxation, or both, to be imposed on the businesses, professions and real estate located within a parking district;

(h) Provide to the Government, at no additional cost, certain data obtained from parking violators in a format and at intervals which are agreeable to both parties;

3. That Authority agrees to remit to the Government \$11.00 for each paid citation issued by the Government's Division of Police to the Government's Division of Revenue.

4. In consideration for the Authority providing the services described in paragraph 2 above, the Government shall:

(a) Provide bookkeeping and accounting functions, in accordance with Government's policies and procedures, with the exception of payroll which will be handled by the Authority;

(b) Allow use of the LFUCG-owned and installed fiber optic cable for the sole use of connectivity of devices and facilities directly related to this

agreement so long as such usage does not result in additional cost or expenses being incurred by the Government; and

(c) Enter into a lease to furnish office space at a Government owned/leased building in the downtown core and provide the required utilities for the Authority pursuant to the terms of such lease at a commercially reasonable rental rate.

5. In the event of termination of this Agreement by Government as provided for in paragraph 1 above, Authority shall be entitled to that portion of total revenues assigned under this Agreement which had become due and owing up until the date of the termination.

6. Authority shall perform all duties and services included in paragraph 2 above faithfully and satisfactorily at the time, place and for the duration prescribed herein. Authority shall keep itself fully informed of all federal and state laws and all municipal ordinances and regulations and with all safety and loss control rules, regulations and policies of the Government's Division of Risk Management, in any manner affecting the work or performance of this Agreement, and shall at all times observe and comply with such laws, ordinances and regulations, whether or not such laws, ordinances or regulations are mentioned herein, and shall indemnify Government, its officers, agents and employees against any claim or liability arising from and based on the Authority's violation of any such laws, ordinances or regulations. Authority shall permit the Division of Risk Management to review, audit, and inspect any and all of its records and operations to ensure compliance with the provisions of this Agreement.

7. The Authority or any of its agents or subcontractors to the extent permitted by law, agrees to defend, indemnify and save harmless the LFUCG, their Employees, volunteers and elected officials, from and against all liabilities, claims, actions, expenses, obligations, losses, fines, and assessments resulting from or arising out of any error or omission, negligence or intentional misconduct or any other action relating to the provision of the services specified in this Agreement. Indemnification shall include, in addition to the above, attorney's fees, costs related to investigation and defense and any other expenses related to any such claim, action or proceeding. The Authority shall not be liable for, and the LFUCG agrees to pay, the cost of defense, and indemnify and hold harmless the Authority from and against all liabilities, claims, actions, expenses, including attorneys fees and costs related to the investigation and defense of such claim, action, or proceeding, obligations, losses fines, penalties, and assessments resulting from or arising out of any error or omission, negligence or intentional misconduct of the LFUCG, its agents, and employees.

The Authority must provide and maintain in force at all times during the term of the services contemplated herein Commercial General Liability Insurance and Errors and Omissions Coverage against claims which may arise from or in connection with the work performed in the principal amount of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate, per policy year, for any act or omission in providing those services. Additionally, the Authority shall maintain during the term of the services Commercial Automobile Liability Insurance coverage with combined single limits of not less than \$1,000,000 per occurrence. Said policies

shall name "The Lexington-Fayette Urban County Government, its elected and appointed officials, employees, agents, boards, consultants, assigns, volunteers and successors in interest," as "additional insureds." Authority shall also maintain Workers Compensation Insurance as required by the Kentucky Revised Statutes and Employer Liability Coverage equal to \$1,000,000. All policies of insurance shall be placed with an insurer authorized to do business in the Commonwealth of Kentucky with a rating classification of no less than VIII, as defined by the most current Best's Key Rating Guide. The policy shall provide that such insurance shall not be cancelled, modified or permitted to lapse without thirty (30) days prior written notice to LFUCG. Evidence of such coverage is to be submitted as part of this Agreement and included as Exhibit B.

8. Authority shall prepare an annual report, to be submitted to the Government's Commissioner of Finance within sixty (60) days of the close of each fiscal year containing, for each of the services enumerated in paragraph 2, a full description of services rendered, all receipts, expenditures, revenues received and funds on hand. Failure to file said report shall be considered a default event. If, after written notice of default is provided by the Commissioner of Finance to the Authority, such default is not remedied within sixty (60) days, this Agreement shall be considered in default, and all revenues assigned and services provided by Government to the Authority pursuant to paragraph 3 shall be terminated. In September of each year, at a regularly scheduled work session of the Lexington-Fayette Urban County Council, the Authority shall make a presentation of its activities pursuant to this agreement, including such information as has been enumerated in the previously-prepared report and updated with such

additional information as may be available by the time of the presentation. The Authority shall also make such additional presentations as reasonably requested by the Government.

9. Books of accounts shall be kept by the Authority and entries shall be made therein of all money, goods, effects, debts, sales, purchases, receipts, payments and any other transactions of the Authority. The books of accounts, together with all bonds, notes, bills, letters and other writings belonging to the Authority, shall be maintained at the principal place of business of the Authority as set forth in this Agreement. Government shall have free and complete access to the books, papers and affairs of the Authority at all reasonable times, and if it desires, it may have the books and papers of the Authority audited and examined by auditors, accountants or attorneys, either internal or external. Any examination shall be at the expense of the Government.

10. Government may designate such persons as may be necessary to monitor and evaluate the services rendered by the Authority. The Government, its agents and employees, shall, at all times, have unrestricted access to all places where or in which the services required hereunder are being carried on and conducted. Inspection and monitoring of the work by these authorities shall in no manner be presumed to relieve in any degree the responsibility or obligations of Authority, or to constitute Authority an agent of the Government.

11. Authority shall provide equal opportunity in employment for all qualified persons, shall prohibit discrimination in employment because of race, color, creed,

national origin, gender, age, or sexual orientation, shall promote equal employment and shall cause each of its subcontractors to do so. This program of equal employment opportunity shall apply to every aspect of its employment policies and practices.

12. Authority shall adopt a written sexual harassment policy, which shall, at a minimum, contain a statement of current federal, Kentucky, and Government law; a list of prohibited behaviors; a complaint process; and a procedure which provides for a confidential investigation of all complaints. The policy shall be given to all employees and clients and shall be posted at Authority offices and employee gathering areas. The policy shall be submitted to the Department of Law for review within sixty (60) days of the execution of this Agreement.

13. Authority agrees that it shall apply all revenues received by it pursuant to this Agreement in accordance with lawful investment policies for governmental entities.

14. The parties agree that the Authority has lawful permission to utilize the real property comprising the public parking spaces for purposes consistent with the Ordinance and this Agreement until such time as the Government may have use for such property for another purpose. Authority shall, at its own expense, maintain the parking spaces in good condition, repair, and working order. If destruction, total or partial, ensues so as to make any of the spaces (or any portion thereof) unusable for the purposes intended, such destruction shall not operate as a surrender or cancellation of this Agreement and shall not relieve Authority from any obligations hereunder, but the Authority agrees to repair or restore the spaces(s) at its own expense, within reason.



15. Entire Agreement. This instrument contains the entire agreement between the parties, and no statement, promises or inducements made by either party or agent of either party that is not contained in this written Agreement shall be valid and binding; and this Agreement may not be enlarged, modified or altered except in writing signed by the parties and endorsed hereon. This Agreement supercedes any previous agreement between the parties related to this subject matter.

16. Notices. All notices or other communications hereunder shall be sufficiently given, and shall be deemed given, when delivered or mailed by certified mail, postage prepaid, return receipt requested, to the parties at their respective addresses as follows:

Lexington-Fayette Urban County Government

200 East Main Street  
Lexington, Kentucky 40507  
Attention: Mayor

Lexington and Fayette County Parking Authority  
101 East Vine Street, 1st Floor  
Lexington, Kentucky  
Attention: Chair

The parties may by notice designate any further or different addresses to which subsequent notices or other communications shall be sent.

17. Binding Effect. This Agreement shall be binding upon the parties hereto and upon their respective successors and assigns.

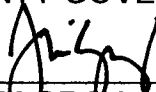
18. Severability. If any clause, provision, or section of this Agreement be ruled invalid or unenforceable by any court of competent jurisdiction, the invalidity or

unenforceability of such clause, provision, or section shall not affect any of the remaining clauses, provisions, or sections hereof.

19. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky and the ordinances and regulations of the Urban County Government.

IN WITNESS WHEREOF, the parties have executed this Agreement at Lexington, Kentucky, the day and year first above written.

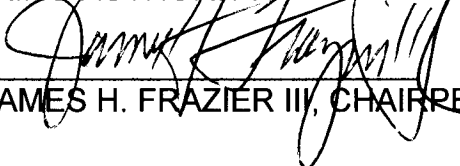
LEXINGTON-FAYETTE URBAN  
COUNTY GOVERNMENT

BY:   
JIM GRAY, MAYOR

ATTEST:

  
CLERK OF URBAN COUNTY COUNCIL

LEXINGTON AND FAYETTE COUNTY  
PARKING AUTHORITY

BY:   
JAMES H. FRAZIER III, CHAIRPERSON

  
WITNESS OR NOTARY