

**AGREEMENT BETWEEN THE
CITY OF GEORGETOWN AND LEXINGTON-FAYETTE URBAN COUNTY
GOVERNMENT FOR THE APPROPRIATION OF FUNDS TO THE SOUTH
SEWER EXTENSION PROJECT**

THIS AGREEMENT is made and entered into as of the 4th day of May, 2020, by and between the **CITY OF GEORGETOWN, KENTUCKY**, a municipal corporation, hereinafter referred to as the “City”, and **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government pursuant to KRS Chapter 67A, hereinafter referred to as “LFUCG”;

WHEREAS, the City has, for a number of years, been seeking a solution to the environmental issues associated with Georgetown Mobile Estates (“GME”) relative to the Cane Run Watershed; and,

WHEREAS, the majority of GME is located inside Scott County limits, but a portion of the property is located in Fayette County; and,

WHEREAS, the City and the Georgetown Municipal Water and Sewer Service (hereinafter, “GMWSS”) have developed a plan whereby GMWSS would provide sewer service to GME following the construction of an interceptor gravity sewer, pump station and force main (“the South Sewer Extension Project” or “Project”); and,

WHEREAS, LFUCG has reviewed the Project construction plans and construction schedule as approved by the Kentucky Division of Water and agrees that the approved plans are technically feasible for accomplishing the objectives of this agreement; and,

WHEREAS, the South Sewer Extension project is estimated to cost approximately \$12.03 million dollars; and,

WHEREAS, a financial contribution from LFUCG will ensure the completion of the Project and protect Fayette County and its citizens against future environmental hazards; and,

WHEREAS, in light of the location of GME on the Fayette and Scott County boundary and its connection to the Cane Run Watershed in Fayette County, LFUCG has agreed to contribute Four Hundred and Seventy Five Thousand Dollars (\$475,000.00) in funding for the purpose of constructing the necessary sewer infrastructure improvements for the Project; and,

WHEREAS, the City has agreed to reserve future capacity in the Project and to provide sewer service to Maple Grove Mobile Home Park, a nearby mobile home park in Fayette County, in the event that the package wastewater treatment plant currently providing service to Maple Grove Mobile Home Park should ever fail to provide sewer service and/or to remediate any future environmental hazard posed to the Cane Run Watershed by Maple Grove Mobile Home Park. Nothing in this Agreement shall be construed to require the City or GMWSS to construct any additional infrastructure beyond that contemplated in the Project; and,

WHEREAS, the legislative bodies of the City and LFUCG find that it is in the best interests of both bodies and the citizens of each of their respective political subdivisions to move forward with the Project to abate the environmental hazard posed to the Cane Run Watershed and to establish a sustainable process for the disposal of sewage by connecting GME to municipal sanitary sewer service and decommissioning the two existing package treatment plants; and,

NOW, THEREFORE, in consideration of the mutual and reciprocal covenants hereof, the Parties hereby agree as follows:

1.0 **Purpose of Agreement:** The purpose of this Agreement is to aid in the financing of the South Sewer Extension Project. Specifically, the City and LFUCG shall cooperate in the financing of necessary sewer infrastructure to facilitate the Project to connect GME to GMWSS and to decommission two (2) package treatment plants located at GME.

2.0 **Administration:** There shall be no separate legal or administrative entity created to administer this Agreement. The Parties acknowledge and agree that the City will bear all responsibility for administration of the Project. Aside from its financial contribution, LFUCG shall maintain no responsibility for completion of the Project.

3.0 **Fiscal Considerations:** Funding shall be appropriated and expended as follows:

3.1 **Expenditures:** City shall not expend LFUCG funds on any project, or portion thereof, not directly related to the Project.

3.2 **Funding:** LFUCG shall appropriate \$475,000.00 in funding for the Project. The City shall be solely responsible for obtaining and managing all other funding required for the Project.

3.3 **Invoice:** The City shall invoice LFUCG for 50% of the amount of the contribution upon the date that the City awards a contract for construction of the Project to a Contractor. The City shall invoice LFUCG for the remaining balance on the Project's Substantial Completion date. LFUCG's final payment of the appropriation is expressly conditioned upon the City's Substantial Completion certification of construction for the Project.

4.0 **Ownership of Assets:** All assets hereafter purchased, and infrastructure hereafter created, by the City for the Project shall be owned and maintained by the City, through GMWSS, with the exception of any property privately owned by GME.

5.0 **Records:** The City shall maintain and keep accurate records of expenditures made pursuant to this Agreement and shall provide LFUCG with copies thereof upon written request.

6.0 **Limitation of Liability:** Except for those obligations specified in this Agreement, neither the City nor LFUCG shall have any obligation or liability to the other for any costs, expenses, losses, damages or any other claims for relief that are in any way related to any act or omission in regard to the Project that is the subject of this Agreement.

7.0 **Effective Date:** This Agreement shall become effective when the Agreement has been authorized by the City and LFUCG, respectively, by appropriate ordinance, resolution, or otherwise pursuant to law, and upon execution of the Agreement by the parties hereto.

8.0 **Duration:** This Agreement shall remain in effect until the Project has been completed and all of the obligations of the parties expressed herein have been fulfilled by each of the parties hereto.

9.0 **Project Changes.** The City shall provide written notice to LFUCG of any material changes to the approved Project construction plans, to the approved Project construction schedule, and/or to the estimated Project cost, including a description of any material changes, an explanation of the reason for any material changes, and an explanation of how any material changes will affect the design, construction, and schedule for completion of the Project.

10.0 **Use of Constructed Project Facilities.** The City and LFUCG acknowledge that Fayette County has an urban service boundary that contains urban development within an area that can be easily and efficiently extended the urban services and public facilities of LFUCG. Consistent with this purpose, the constructed Project facilities that are the subject of this agreement shall be used exclusively for the conveyance and/or treatment of sewage generated in Scott County, Kentucky, unless otherwise agreed to in writing by the parties or except as otherwise provided herein. Furthermore, the parties agree that no property or portion of property located within Fayette County shall be permitted to connect to the constructed Project facilities, unless agreed to in writing or except as otherwise provided herein.

Notwithstanding the foregoing, the City hereby agrees to reserve 0.030 MGD in sewer capacity in the Project facilities so as to enable GMWSS to provide sewer service to Maple Grove Mobile Home Park, which is located in nearby proximity to the Project facilities, in the event that the wastewater treatment facility located at 4130 Georgetown Road, in Fayette County, Kentucky, should, for any reason, fail to provide service to Maple Grove Mobile Home Park, or as necessary to remediate any environmental hazard posed to the Cane Run Watershed by the wastewater treatment facility currently providing service to Maple Grove Mobile Home Park.

11.0 **Permissible Methods of Termination:**

11.1 **Termination Without Cause:** This Agreement may be terminated by either party by providing notice to the other Party not less than ninety (90) days in advance of the termination.

11.2 **Termination With Cause:** In the event either party fails to comply with a provision of this Agreement, but only after the party fails to comply for more

than ten (10) days after receipt of written notice of a written demand for compliance, this Agreement may be terminated immediately.

11.3 **Clawback.** In the event of a termination (with or without cause), LFUCG's financial contribution shall be returned. Repayment of LFUCG's contribution in the event of termination shall be made by the City within ninety (90) days of the effective date of such termination.

12.0 **Notice:** Notice of termination and other notices required to be provided by this agreement shall be accomplished by delivering notice via regular first-class mail, postage pre-paid to the following:

City of Georgetown
Attn: Mayor
100 North Court Street
Georgetown, KY 40324

LFUCG
Attn: Mayor
200 East Main Street
Lexington, KY 40507

13.0 **Standard Contract Provisions:**

13.1 **Governing law:** This Agreement shall be interpreted, construed and governed by Kentucky law.

13.2 **Severability:** In the event that any one or more of the provisions of this Agreement, or any part of a provision shall be judicially determined to be contrary to law or otherwise invalid or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision or part of a provision of this Agreement; and such provision or part of a provision shall be reformed, interpreted, and construed as if such provision or a part of a provision had never been included in this Agreement.

13.3 **Entire Agreement:** This Agreement constitutes the entire agreement and understanding between the City and LFUCG in regard to the subject

matter thereof; and it supersedes all prior negotiations, representations, understandings, and agreements between them, written or oral, all of which are no longer effective.

13.4 **Execution and Counterparts:** This Agreement may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.


13.5 **Amendment:** This Agreement may not be amended by any means other than a written agreement signed by both the City and LFUCG.

13.6 **Captions and Headings:** Captions and headings of the paragraphs and sub-paragraphs of this Agreement have been inserted for the convenience of reference only, and in no way shall affect the interpretation of any of the terms and provisions of this Agreement.

13.7 **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 this or to be implied from the 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, this Agreement has been signed by **TOM PRATHER**, as Mayor of the City of Georgetown, and **LINDA GORTON**, as Mayor of the Lexington-Fayette Urban County Government, on the date opposite their respective names, pursuant to the authority granted them by their respective legislative bodies.

CITY OF GEORGETOWN

By: 
Tom Prather, Mayor

ATTEST:


Trace Hoffman, City Clerk


**LEXINGTON-FAYETTE URBAN COUNTY
GOVERNMENT**

By: 
Linda Gorton, Mayor

ATTEST:


Deputy Clerk of the Urban County Council

PREPARED BY:


Devon E. Golden
City Attorney
100 North Court Street
Georgetown, KY 40324
(502) 863-9800