

## **Sunset Provisions for Newtown Pike Extension Environmental Justice Mitigation**

**WHEREAS, the Department of Highways (Department) and the Lexington Fayette County Government (LFUCG)** entered into an agreement on December 13, 2000 and series of five supplemental agreements (SA) all relating to the Newtown Pike Extension Project (NPE), including mitigation of project impacts to a low income and minority neighborhood, Davis Bottom N/K/A Davis Park; and

**WHEREAS, the Department and LFUCG** jointly created the Lexington Community Land Trust, Inc., a Kentucky non-profit corporation (LCLT) as part of said mitigation for the protection and preservation of Davis Park along with its attendant affordable housing thereby mitigating social justice impacts to the benefit of the affected neighbors and to the larger community; and

**WHEREAS, the Department, LFUCG, and LCLT, the three principal parties,** desire to fulfill all remaining obligations of the project related to social justice mitigation and provide an opportunity for the LCLT to become self-sustaining; and

**WHEREAS, the Department, LFUCG, and the LCLT** desire clarity of the remaining commitments and project expectations between these three principal parties in order to achieve finality of the project's social justice component; and

**WHEREAS, the Department, LFUCG, and the LCLT,** acknowledge that upon execution and fulfillment of this agreement and the sixth SA, all requirements set forth in the ROD related to social justice mitigation and the LCLT are satisfied.

**NOW, THEREFORE,** the undersigned authorized agents intend for the execution and fulfillment of a sixth SA by and between the Department and LFUCG to encompass and incorporate by reference this document setting forth the final actions required of the project as enumerated below. Whereupon the LCLT will be obliged to declare in writing KYTC's obligations outlined in the Record of Decision fulfilled as it relates to the LCLT and social justice mitigation.

### **KYTC Financial Commitments:**

1. **Funding of Community Center Building:** KYTC shall provide a total \$1,012,000.00 for design and construction of the community center structure(s). This figure includes the \$920,000 previously designated in SA#5 dated January 10, 2017, Section 1(f) and represents a 10% (\$92,000) increase in funding due to a rise in construction costs.

2. **Remnant property:** KYTC shall transfer any income derived from the sale of remnant parcels on this project to the LCLT as required by the Record of Decision (ROD), p.29.
3. **Park construction, LCLT office space, and resident access to Artworks Carver School classes:** KYTC shall authorize and reimburse LFUCG an \$800,000 allocation of SLX funds with \$200,000 matching funds provided by LFUCG for design and construction of Davis Park. This is done with the understanding that LFUCG shall begin the Request for Qualifications (RFQ) process no later than March 15, 2021 so that design and construction will begin as soon as funds are authorized in July 2021. Continuous and uninterrupted progress (save acts of nature) shall begin as soon as possible on the design and construction of Davis Park to meet a completion date of no later than December 31, 2022. In addition, in consideration for the \$800,000 allocation, LFUCG agrees to continue to provide LCLT's use of its current office space at Artworks at Carver School until the community center is completed as set forth in this agreement and, upon execution of this agreement, will provide a reduced fee for LCLT's resident children enrolling in Carver School Artworks classes for a minimum of one year.
4. **Historical Markers:** KYTC shall authorize \$15,000 to LFUCG for acquisition and installation of historical markers in the mitigation area which shall be installed no later than June 2023.
5. **Streetscape:** KYTC shall authorize \$750,000 to LFUCG to design a bus stop and install streetscape amenities with input from and collaboration with the community to the design team with said work being completed no later than June 2023.
6. **LCLT funding:** KYTC shall make available an additional \$1,998,000 in mitigation funding to reimburse the LCLT for additional administrative expenses and additional expenses incurred in affordable housing development.
  - a. Of the \$1,998,000, \$506,000 is designated as authorized reimbursement for development gap funding which is the difference between total development costs and the appraised market value for Phase I single-family homes in the project mitigation area. Eligible development gap costs include builder costs, additional construction costs, inspection fees, holding costs, closing costs, and project administration costs, otherwise known as developer fees. This definition supersedes and applies retroactively to Gap Financing terminology used in previous SAs, particularly SA#5 and SA#4 and includes non-original resident housing. These reimbursable costs can be paid upon receipt of proper documentation.
  - b. Of the \$1,998,000, \$310,500 is designated as authorized reimbursement of additional project development. Eligible project development costs include

legal fees, holding costs (insurance, utilities, security, maintenance, etc.), resource development (financing costs, grant consultant), site development (utility infrastructure, tree plantings), pre-development (environmental testing, property surveys, appraisals), project requirements (community engagement, competitive bidding), and additional construction costs for original resident homes. These reimbursable costs can be paid upon receipt of proper documentation.

- c. Of the \$1,998,000, \$181,500 is designated for authorized reimbursement of the housing affordability gap funding for the difference between sales price and the appraised market value for Phase I single-family homes in the project mitigation area. This funding is to be applied toward affordability gaps not previously covered by Attorney General Settlement Funds. These reimbursable costs can be paid upon receipt of proper documentation.
  - d. Of the \$1,998,000, \$800,000 is designated as additional operating funds to last through fiscal year 2023. Operating funds shall be distributed by LFUCG in equal annual installments of \$200,000 with LCLT providing a copy of an independent audit for each installment period.
  - e. Of the \$1,998,000, \$200,000 is designated for a set-aside fund to cover deficiencies in affordability on the resale of homes owned by original Davis Bottom residents. These funds shall be held in an interest-bearing escrow account by the LCLT solely for the purposes stated.
7. **Access Modification to Existing Box Culvert at DeRoode Street:** KYTC shall provide LFUCG with an additional \$200,000 for construction of an additional manhole to be completed no later than June 2023 in order to allow LFUCG access for future inspections.
  8. **University of Kentucky, Kentucky Transportation Center assistance:** KYTC, through the Kentucky Transportation Center (KTC), will provide assistance within six months from the execution date of this agreement for 10 weeks at 15 hours per week to LFUCG and the LCLT should they desire to implement any recommendations from the NPE LCLT Sustainability Report.
  9. **Total financial commitment of \$3,855,000:** KYTC will make a final financial commitment of \$3,055,000 federal STP funds. There will be an additional \$800,000 separately authorized SLX funds through the Lexington area MPO. This commitment is made with the understanding that **NO ADDITIONAL FUNDS** will be requested or forthcoming pertaining to social justice mitigation and/or the LCLT.

### **KYTC non-financial commitments:**

1. **Project Management assistance:** KYTC will keep the project open to allow for project management assistance to the LCLT while it is undergoing procurement and construction of the institutional building(s).
2. **Lextran bus stop:** KYTC will meet with Lextran to secure a route change indicating an active bus stop in the designated bus pull-off in the mitigation area.
3. **Amendments of previous supplemental agreements and clarification of other terms:** KYTC shall amend language of prior SAs for the purposes of clarification:
  - a. SA#3, 1. shall be amended to add that the accounts containing monies in the Supplemental Rent Fund and the Capital Improvement Fund shall be held in an interest-bearing escrow account by LFUCG with both principal and interest held for the benefit the LCLT.
  - b. SA#3, 2(d) shall be amended to replace “Maintenance, Repair” with “Capital” to allow it to read “Capital Improvement Fund” in order to be consistent with other references to this fund in the document.
  - c. SA#3, 4(a) shall be amended to read “including but not limited to” rather than “including without limitation” in order to clarify reimbursement of education funds for non-listed but appropriate purposes when proper documentation is provided.
  - d. SA#3 4(a), shall be amended to allow the LCLT to submit for approval any educational or social service programs it deems beneficial to its residents or pending homebuyers of CLT homes.
  - e. SA#3, 8. shall be amended to require the accounting of the Supplemental Rent Fund and the Capital Improvement Fund to be sent to the LCLT as well as KYTC. The amendment will add the Education and Social Services Fund to this account reporting requirement.
  - f. SA#4, 1. (b) – (g) and (i) and SA#5 1. (a)-(e), which designated specific funding amounts to specific addresses, shall be amended to allow reimbursement for costs of any unit where funding was insufficient.
4. **Notice of fulfillment of ROD social justice requirements:** Upon completion of the obligations set forth in this Sunset Agreement and the sixth SA, KYTC will send notice to the LCLT and LFUCG that all social justice mitigation efforts are fulfilled and concluded as to KYTC for the NPE Project.

### **LFUCG Commitments:**

1. **Reimbursements:** LFUCG shall timely reimburse the LCLT funds remaining under SA#s 4&5 after proper amendments have been executed, and proper documentation for reimbursement is provided.

2. **Property transfer:** Upon receipt of the deeds transferring title to Parcel 1215 and to Phase II properties, LFUCG shall take immediate steps to transfer said property to the LCLT, acknowledging that time is of the essence. Said land must be transferred no later than June 1, 2021.
3. **Design and construct Davis Park:** LFUCG will be responsible for \$200,000 matching funds for the design and buildout of the park. LFUCG shall begin the Request for Qualifications (RFQ) process no later than March 15, 2021 so that design and construction will begin as soon as funds are authorized in July 2021. Continuous and uninterrupted progress (save acts of nature) shall begin as soon as possible on the design and construction of Davis Park to meet a completion date of no later than December 31, 2022.
4. **Streetscape:** Upon notice of authorization of the \$750,000 for streetscape work, LFUCG shall design a bus stop with input from the community and install streetscape amenities per project recommendations and community input with said work being completed no later than June 2023. LFUCG shall also provide an itemized budget for this effort.
5. **Continue to provide current space at Artworks Carver School for LCLT offices:** LFUCG agrees to allow the LCLT to maintain its current office space at no cost to either KYTC or LCLT. This shall continue until such time as the Phase II property is transferred from KYTC to LFUCG and subsequently to LCLT, allowing until June 2023 for construction of office and community buildings.
6. **Carver School Artworks classes:** Upon execution of this agreement, LFUCG agrees to make Artworks classes affordable to children of LCLT residents for 1 year. This shall be accomplished through reduced fees (sliding scale fees based on income up to and including a 50% of full value discount). LFUCG further agrees to proceed in good faith for the following 5 years to co-apply, with the LCLT, for grants to cover the costs of reduced fees for LCLT residents and others.
7. **Support the LCLT:** LFUCG agrees to make a good faith effort to support residential and commercial development of Davis Park, f/k/a Southend Park Urban Village and/or Davis Bottom. LFUCG shall also make a good faith effort to create policies and programs to preserve and enhance existing affordable housing by using the land bank, the LCLT, and the Vacant Land Commission. These policies and programs will include but not be limited to taking steps to address ongoing funding and identify methods to facilitate these programs by reaching the critical mass of assets needed to become self-sufficient as set forth in Imagine Lexington, 2018 Comprehensive Plan, pp. 46, 49, and 244.

8. **Review and consider findings and recommendations of the NPE Lexington Community Land Trust Sustainability Report:** LFUCG agrees to proceed in good faith in reviewing and considering adoption of recommendations identified in the NPE Lexington Community Land Trust Sustainability Report.
9. **Design and construct manhole to access box culvert:** LFUCG agrees to design and construct a manhole which allows access to the box culvert on DeRoode Street at a location near the previous compromised area. This shall be completed no later than June 2023. LFUCG also agrees to continue to maintain said culvert, addressing any impacts on the neighborhood, including impacts to the sidewalks and roadway.
10. **Final surfacing of neighborhood roadways.** Upon completion of final buildout of neighborhood, LFUCG shall schedule final surfacing of neighborhood roadways.

**LCLT Commitments:**

1. **Audits:** LCLT will provide LFUCG and KYTC with an independent audit of its finances for each year through fiscal year 2023.
2. **Business Plan Update:** The LCLT agrees to update the business plan set forth in the ROD and any subsequent amendments thereto to more fully articulate the path to both financial and service self-sustainability including a sustainability assessment, staff considerations, other operational and program costs, membership drives, increases in land leases, fundraising, and grant writing and stewardship obligations and policies.
3. **Institutional Buildings:** With assistance from KYTC, the LCLT will begin planning for timely construction of the institutional building(s). Construction of these building(s) should be completed no later than June 2023. One institutional building should be named after Ann Ross, former board president of Nathaniel Mission.
4. **Grant writing:** LCLT agrees to solicit grant funds in three areas:
  - a. Partner with LFUCG Parks Department to solicit funds to support reduced class fees for LCLT resident's children and others at Carver School Artworks beginning in 2021 – 2025.
  - b. Solicit grants for portable park equipment and oversee its use and maintenance.
  - c. Partner with LFUCG Parks Department to solicit funds to purchase permanent park equipment for Davis Park. LFUCG will retain responsibility for any said equipment purchased from these grant awards.

**5. Review and consider findings and recommendations of the NPE Lexington Community Land Trust Sustainability Report:** Proceed in good faith in reviewing and considering the findings and recommendations of the NPE Lexington Community Land Trust Sustainability Report.

**6. Notice of completion of neighborhood buildout.** LCLT shall notify LFUCG in writing that the buildout of the neighborhood has been completed.

**IN TESTIMONY WHEREOF**, the three principal parties have caused these presents to be executed by their duly authorized officers:

\_\_\_\_\_  
Russ Barclay  
Executive Director  
Lexington Community Land Trust

\_\_\_\_\_  
Date

Reviewed as to form and legality:

\_\_\_\_\_  
William Fogle  
Office of Legal Services  
Kentucky Transportation Cabinet

\_\_\_\_\_  
Date

\_\_\_\_\_  
James P. Gray II  
Secretary  
Kentucky Transportation Cabinet

\_\_\_\_\_  
Date

Reviewed as to form and legality:

\_\_\_\_\_  
Department of Law  
Lexington-Fayette Urban County Government

\_\_\_\_\_  
Date

\_\_\_\_\_  
Linda Gorton  
Mayor  
Lexington-Fayette Urban County Government

\_\_\_\_\_  
Date