MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING ("MOU" or "Agreement"), made by and between LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, an Urban County Government pursuant to KRS 67A, 200 East Main Street, Lexington, Kentucky 40507 (hereinafter called "Lexington"), and COMMONWEALTH OF KENTUCKY, by and through the UNIVERSITY OF KENTUCKY, 107 Main Building, Lexington, Kentucky 40506 (hereinafter called the "University")(collectively the "Parties").

RECITALS:

A. Lexington and the University are committed to making Lexington a world class University City through partnering with each other to improve the overall quality of life on campus and throughout Lexington.

B. The Parties are committed to developing and marketing a first-class gateway to downtown Lexington and the University's Main Campus from the Newtown Pike interstate access near the University's Coldstream Research Campus ("Coldstream").

C. The Parties wish to collaborate with each other and the business community to ensure that sufficient resources are available to maintain and grow an educated workforce.

D. The University owns approximately 199 acres of farm property located at 2850 Georgetown Road and the contiguous property which is within the urban services boundary and adjacent to Coldstream which is currently being used as a dairy farm and for poultry research operations, and which could be utilized for economic development purposes, but which lacks essential infrastructure (the "Turkey Neck Property").

E. The University is willing to transfer ownership of the Turkey Neck Property to Lexington for economic development use by one or more businesses in return for Lexington providing the necessary infrastructure to allow such usage, and for the additional consideration provided in this MOU.

F. A dairy farm and poultry research operations (the "Farm Operations") are currently located on the Turkey Neck Property, both of which are of research value to

the University and the community and which the Parties are committed to relocating and to developing a plan which will assist the University in funding its relocation.

G. The University is willing to convey up to approximately 48.3 acres of land in Coldstream for Economic development purposes with half of any proceeds from such development to be used for the improvement to the Turkey Neck Property and the other half of any proceeds to be used by the University for improvements to Coldstream and/or for the relocation of the Farm Operations.

H. Lexington owns, maintains and controls the streets or roadways or portions thereof which intersect the Main campus area of the University which the University would like to acquire, and which would have little or no detrimental impact if no longer utilized as Lexington owned streets and which are further described in the attached Exhibit A, which is incorporated herein by reference as if fully stated.

I. Lexington, the U.S. Environmental Protection Agency, and the Commonwealth of Kentucky have 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 Lexington to develop, submit, finalize, and implement certain plans for the improvement of its wastewater collection and transmission system, including at least one Remedial Measures Project ("UK Trunk D Project") in the area covered by this agreement. Lexington is required to complete this project in accordance with applicable Consent Decree deadlines. The University is committed to full cooperation with Lexington in the fulfillment of Lexington's obligations under the Consent Decree, specifically including but not limited to completion of the UK Trunk D Project, which will be paid for solely by Lexington

J. Pedestrian and cyclist safety in and around campus is of mutual benefit to the Parties, and they are committed to making improvements to such safety by jointly developing and funding a plan for improvement of the streets on or surrounding campus in order to foster improved safety.

K. The Parties are committed to developing a coordinated partnership related to Economic Development, Workforce Development, and Job Placement.

L. The Parties believe that the creation of a Tax Increment Financing District encompassing the portion of the Coldstream Research Campus included in the University's TIF application would be beneficial and would be a means of funding public improvements located within the TIF Development Area.

AGREEMENTS:

NOW, THEREFORE, in consideration of the Recitals, the mutual covenants hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, it is agreed by and between the Parties as follows:

1. The above recitals are incorporated herein as if fully stated.

2. The University will transfer title to the Turkey Neck Property to Lexington exclusively for the purpose of economic development. This transfer shall occur when the University's Farm Operations have ceased, all existing structures and equipment have been removed (including any property being leased to another party), and all necessary environmental remediation work has been completed. This transfer is anticipated to take place by January 1, 2022, or as soon as the environmental remediation work is completed, but in no event shall this take place any later than July 1, 2022. A map of the property is attached hereto as Exhibit "A" and incorporated herein by reference. The University shall be responsible for any surveying, consolidation of properties and any platting necessary for the conveyance of the property to Lexington.

a. All of the pre-conveyance requirements and obligations described above will be completed by the University at no cost to Lexington, but may be paid for from the funding received from the subsequent sale or transfer of the Coldstream Property as further provided herein (paragraph 3(b), below).

b. If the Parties mutually agree that an economic development opportunity warrants expedited conveyance of some or all of the property, the Parties will work together in good faith to such end.

c. The University will provide the Mayor or his or her designee with an updated status report on the progress being made with respect to the pre-conveyance requirements and obligations described herein on at least an annual basis.

d. As a condition of the final conveyance of the Turkey Neck Property, Lexington will provide the necessary infrastructure improvements for such development of the Turkey Neck Property, including road access. Plan for access will be mutually agreed upon by the Parties, and may include road or bridge access from the Coldstream research Campus (McGrathiana Parkway) or a like consideration from Lexington to the University in consideration for the conveyance of the Property.

3. Within six months of the effective date of this agreement, the University will convey to Lexington an additional acreage of property at the following locations: 1500 McGrathiana – 9.69 acres; 1501 McGrathiana – 6.1 acres; 1525 McGrathiana – 5.66 acres; 1526 McGrathiana – 5.58 acres; 1551 McGrathiana – 9.74 acres; 1776 McGrathiana – 11.53 acres (approximately 48.3 total acres, the "Coldstream Property") as further described in the map attached hereto as Exhibit "B", which is incorporated herein by reference, in the Coldstream Research Campus (zoned P2) which property will be available for sale to a qualified business or businesses for economic development purposes. Any development of this acreage will be subject to the Coldstream Research Design Standards.

a. Lexington will be allowed to market this property as part of its economic development efforts.

b. Half of any proceeds from the sale or use of this property will be used to pay for the infrastructure improvements to the Turkey Neck Property and the other half of any proceeds will be used by the University for improvements to Coldstream and/or for the relocation of the Farm Operations. Any subsequent transfer of this property for substantially less than fair market value must be agreed to by the University's Executive Vice President for Finance and Administration.

c. The Parties will confirm the exact acreage of the Turkey Neck Property prior to conveyance.

4. Lexington will transfer title to or quitclaim whatever interest it may have in the campus streets and alleys as further described on the attached Exhibit "C" to the University. The transfer of these streets will be subject to any existing easements or encumbrances and may require the creation of utility easements to accommodate any pre-existing utility facilities. It is the intent of the Parties that upon transfer of these streets and alleys the University shall be responsible for the payment of any charges related to any street lights adjoining them. The primary purpose for acquiring these streets is for consistency with the University's long term development plans and to better control improvements being made to accommodate pedestrian and bicycle traffic.

a. The University shall be responsible for the maintenance of such streets and alleys and their curbs, storm water infrastructure, adjoining sidewalks, fixtures, equipment (i.e., traffic signals where UK owns all streets) and any adjacent rights of way once transferred.

b. It is the intent of the Parties that a formal agreement related to emergency responses related to these areas shall be entered into between the Parties.

c. The Parties acknowledge that LexPark has invested a significant amount of capital in the form of parking meters located adjacent to several of the transferred

streets and will also lose ongoing revenue related to parking on the transferred streets. Therefore, the Parties commit to working with each other and LexPark to lessen the financial impact caused by the transfer of ownership.

d. Upon conveyance of the following streets by Lexington to the University it may choose, but is not required, to close or alter: (i) the portion of Rose Street between Columbia Avenue and Huguelet Drive, (ii) the unnamed alley running off of Bolivar Street and terminating at South Limestone, and (iii) the portions of Pennsylvania Avenue, Pennsylvania Court, Weidaman Alley, and Dixie Court necessary for the completion of the Greek Park project. The University agrees to implement traffic mitigation measures to accommodate the Rose Street closure. The closed or altered portions of Rose Street, Pennsylvania Avenue, Pennsylvania Court, and Weidaman Alley, Dixie Court must provide sufficient emergency access. These streets shall be conveyed to the University at the same time as the conveyance of the Coldstream Property to Lexington (six months of the effective date of this agreement).

e. The University does not have any plans to restrict vehicular traffic on any of the remaining streets listed on Exhibit "C".

i. All remaining streets shall be transferred to the University at the same time as the transfer of the Turkey Neck Property to Lexington.

ii. Under no circumstances will the University restrict vehicular access or close any of these streets (referenced in 4.e.i., above) unless it owns all of the real property adjacent to that particular street.

f. The University must provide Lexington with advanced written notice of at least 90 days prior to permanently closing any street. The impact of any such closing or restriction must be adequately provided for in the transportation safety plan, described in paragraph 5, below.

g. Lexington agrees that in the interest of promoting safer pedestrian access to and from certain areas of the University's Campus, the University may install traffic calming/pedestrian crossing facilities substantially similar to those recently installed on University Avenue in the following locations prior to the transfer of these streets to the University so long as the installation or related work does not cause any damage to the street or its surrounding infrastructure: Woodland Avenue (between Columbia and Hilltop), Hilltop Avenue, and Columbia Avenue (between Rose and Woodland). The University is not precluded from also making any other pedestrian safety improvements to any of these streets, or any of the other Campus Streets, prior to their transfer to the University so long as the proposed installation or improvement has been through Lexington's normal encroachment and right-of-way approval process prior to installation. With respect to any installation or improvement made by the University to any of the streets prior to the transfer of that street to the University by Lexington, the

University agrees to be solely responsible for repairs or maintenance to the installation or improvement, any damages caused by the installation or improvement, and any third-party claims related to the same.

5. The Parties are committed to a joint effort related to pedestrian, bicycle and vehicular safety in and around campus including safety and infrastructure improvements, enhanced wayfinding, traffic mitigation and calming devices and are in favor of funding a University City Transportation Plan.

a. Subject to the appropriation of sufficient funding in future fiscal years, Lexington is committed to funding at least $1 million over the next 10 years to these efforts.

b. Subject to the appropriation of sufficient funding in future fiscal years the University is committed to funding at least $3 million over the next 10 years to these efforts, including up to $1 million within the first year.

c. An emphasis will be placed on enhancing the safety of South Limestone/Nicholasville Road and the Avenue of Champions and the neighborhoods surrounding campus as part of these plans.

6. In addition to the transfer of campus streets and alleys as described in Exhibit "C," Lexington shall transfer title to stormwater infrastructure (including pipes, manholes, and inlets) depicted and described on the attached Exhibit "D" to the University, including all maintenance and regulatory obligations relating to the identified stormwater infrastructure. The University agrees to accept title to the stormwater infrastructure shown on Exhibit "D." Any unmapped stormwater infrastructure in the area described in Exhibits "C" and "D" shall be retained by Lexington and may be transferred to the University by agreement of the Parties.

a. In accepting title to the stormwater infrastructure identified and described herein, the University shall be responsible for stormwater management and for maintenance of the stormwater infrastructure.

b. The University shall continue to maintain its Municipal Separate Storm Sewer System (MS4) Permit from the Kentucky Division of Water and to the extent permitted by law, the University shall comply with all federal, state and local laws, regualtions and ordinances governing stormwater quality and management.

c. Notwithstanding any other provision of this agreement, Lexington shall retain all rights and privileges to construct, maintain, and/or repair stormwater infrastructure in the area described in Exhibits "C" and "D" as may be necessary for the operation of Lexington's stormwater system.

7. In addition to the transfer of stormwater infrastructure in the area described in Exhibits "C" and "D," Lexingon shall transfer ownership and responsibility of sanitary sewer infrastructure depicted and described on the attached Exhibit "E" to the University. The University shall accept ownership of this sanitary sewer infrastructure. Any unmapped sanitary sewer infrastructure in the area described in Exhibits "C" and "E" shall be retained by Lexington and may be transferred to the University by agreement of the Parties.

a. In accepting title to the sanitary sewer infrastructure identified and described herein, the University shall be responsible for all maintenance of the sanitary sewer infrastructure.

b. To the extent permitted by law, the University shall be subject to all applicable statutes, regulations, and ordinances relating to the operation of sanitary sewers and the management of wastewater, specifically including but not limited to the Clean Water Act, 33 U.S.C. § 1251 *et seq.*, and the regulations promulgated thereto; Kentucky Revised Statutes (KRS) Chapter 224 and the regulations promulgated thereto; and Chapter 16 of the Code of Ordinances of the Lexington-Fayette Urban County Government, all of which are incorporated herein by reference.

c. Notwithstanding any other provision of this agreement, Lexington shall retain all rights and privileges to construct, maintain, and/or repair sanitary sewer infrastructure in the area described in Exhibits "C" and "E" as may be necessary for the operation of Lexington's sanitary sewer system.

8. Pursuant to its obligations under the Consent Decree, Lexington is required to complete a sanitary sewer Remedial Measures Project in the area of Rose Street, Euclid Avenue, and Avenue of Champions, identified as the UK Trunk D Project, described and depicted on the attached Exhibit "F." The University understands that Lexington is required to complete this project in accordance with applicable Consent Decree deadlines. The University agrees to fully cooperate with Lexington in Lexinton's completion of the UK Trunk D Project, specifically to convey all easements necessary to complete the UK Trunk D Project as depicted in Exhibit "F" in accordance with Consent Decree deadlines, including temporary construction easements and permanent easements. The University further agrees to cooperate in good faith toward entering into any more specific necessary agreement(s) and obtaining any and all approvals necessary for Lexington to accomplish the objectives contained in the Consent Decree.

9. The Parties acknowledge that a significant consideration was provided by Lexington in creating a Tax Increment Financing District for the Coldstream Research Campus which will enable the use of certain taxes to pay for public infrastructure improvements within the district and that this approval was contingent upon final approval of this MOU agreement by the Parties. Lexington agrees to assist the University with the KEDFA approval of the TIF.

10. The Parties commit to work with each other to develop a coordinated partnership including economic development, workforce development, and job placement.

11. The Parties agree that they will work together to further the intent of this MOU and will cooperate in good faith towards entering into any more specific necessary agreement(s) and obtaining any and all approvals and capital project authorizations necessary to accomplish to the objectives contained herein, including but not limited to the UK Board of Trustees, the Urban County Council, and the Commonwealth of Kentucky.

12. This MOU shall be effective upon the date of execution by both of the the Parties hereto and shall continue to renew automatically each year unless and until terminated by the Parties or until such time as it superseded by one or more additional agreements.

13. The terms and conditions of this Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the Parties. This provision shall not be construed to permit assignment by any party of any of its rights and duties under this Agreement, which assignment shall be prohibited except with the prior written consent of all Parties hereto.

14. This Agreement sets forth the entire understanding of the Parties with respect to the subject matter hereof, and may be modified only by a written instrument duly executed by each of the Parties hereto.

15. The Parties agree that any suit, action or proceeding with respect to this MOU may only be brought in or entered by, as the case may be, the courts of the Commonwealth of Kentucky.

16. All notices, requests, demands, waivers, and other communications given as provided in this Agreement shall be in writing, and shall be addressed as follows:

Lexington:

Geoff Reed, Chief of Staff, and
Sally Hamilton
Chief Administrative Officer
Government Center
200 East Main Street
Lexington, Kentucky 40507

University:

Eric N. Monday, Executive Vice President
for Finance and Administration, and
Melody Flowers, Executive Director
for Strategic Analysis and Policy
107 Main Building
Lexington, Kentucky 40506

With copy to:

Commissioner of Law
Department of Law
Government Center
200 East Main Street
Lexington, Kentucky 40507

William E. Thro, General Counsel
301 Main Building
Lexington, Kentucky 40506

IN WITNESS WHEREOF, the Parties hereto have executed this Memorandum of Understanding on the date first above written.

Lexington-Fayette Urban County Government

By: _____
Jim Gray, Mayor

Attest: _____
Council Clerk

University of Kentucky

By: _____
Eric N. Monday
Executive Vice President
Finance and Administration

X:\\00616405

Examined For Form & Legality
Office Of Legal Counsel
University Of Kentucky
By: _____
Attorney At Law

EXHIBIT A
200.0000 Acres

EXHIBIT B
Mcgrathiana Pkwy
Pisacano Dr
Aristides Blvd
Newtown Pike
Citation Blvd
Cott Ln
Mark Ave
48.3 acres
(to be surveyed)
Bull Lea Rd
Pintail Dr
Sugar Maple

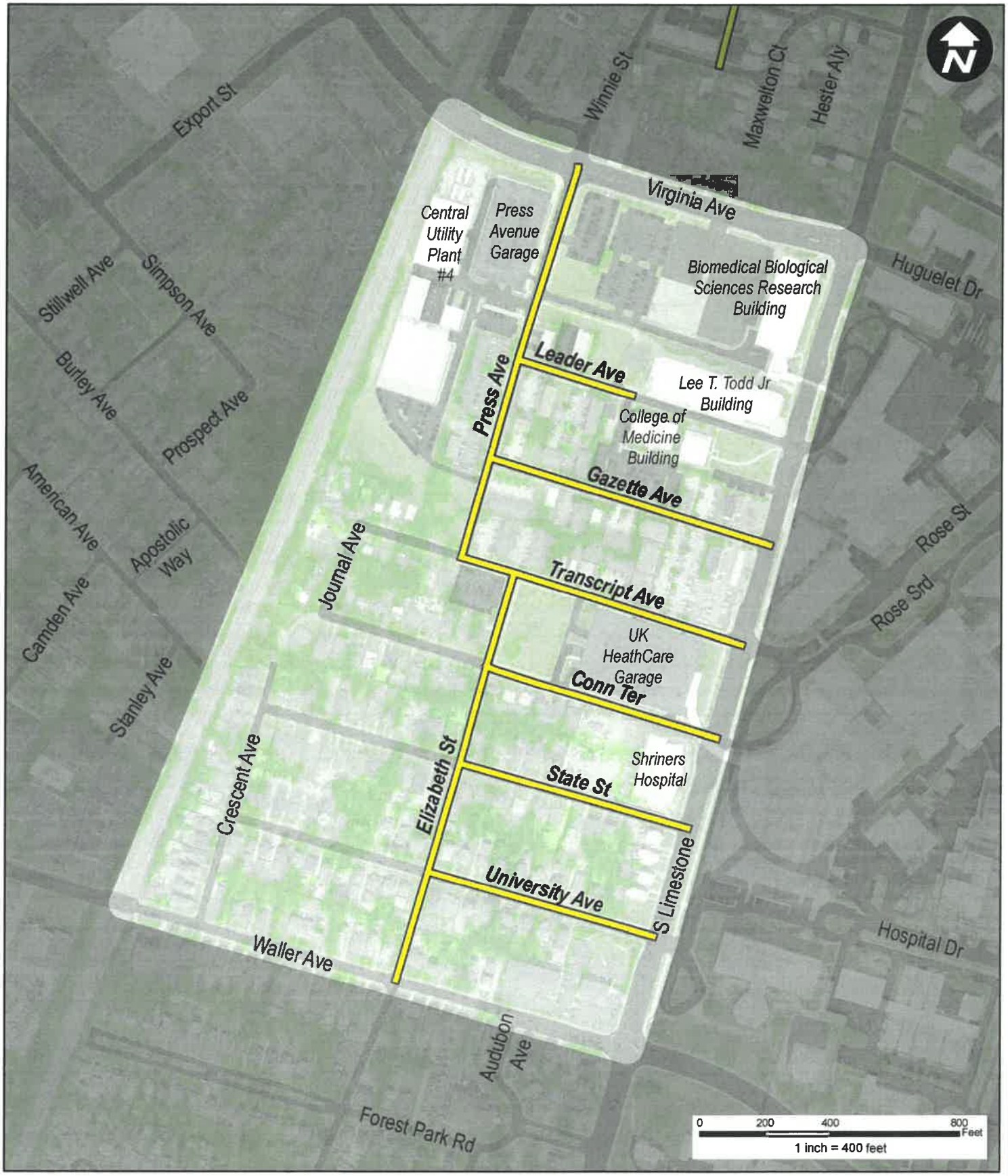

EXHIBIT C-1

STREET OWNERSHIP
LFUCG TO UNIVERSITY OF KENTUCKY
State Street Area

February 14, 2018

Created by: LFUCG GIS Office

Document Path: T:\MXD_Proj\PW_CO\Street Transfer\Street Transfer - State Street Area - 8x11.mxd

EXHIBIT C-2

STREET OWNERSHIP

LFUCG TO UNIVERSITY OF KENTUCKY

North Campus Area

February 14, 2018

Created by: LFUCG GIS Office

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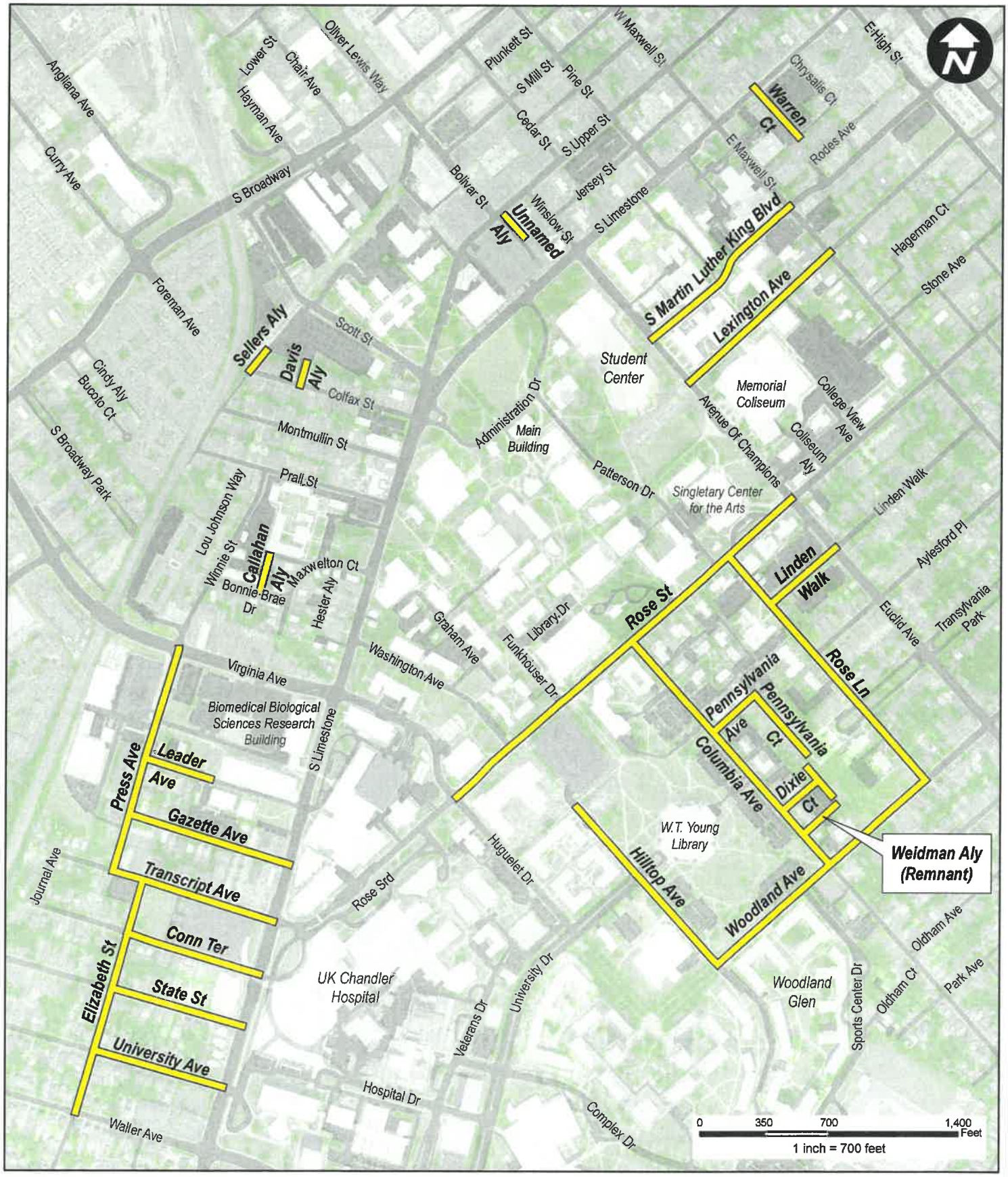

EXHIBIT C-3

STREET OWNERSHIP

LFUCG TO UNIVERSITY OF KENTUCKY

Overview

February 13, 2018

Created by: LFUCG GIS Office

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Document Path: T:\MXD_Proj\PW_CO\Street Transfer\Street Transfer - Pralltown Area - 8x11.mxd

EXHIBIT C-4

STREET OWNERSHIP

LFUCG TO UNIVERSITY OF KENTUCKY

Pralltown Area

February 14, 2018

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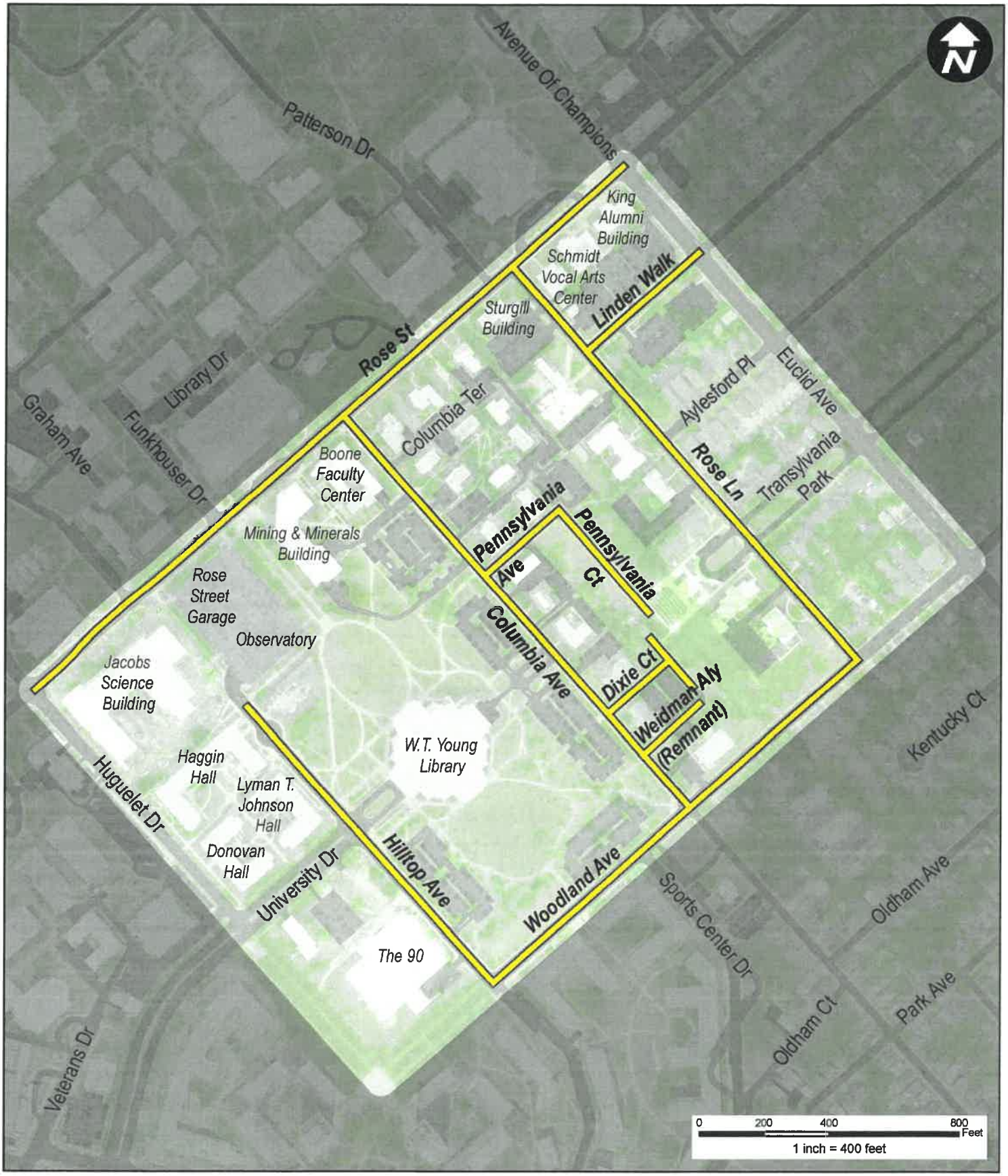

EXHIBIT C-5

STREET OWNERSHIP

LFUCG TO UNIVERSITY OF KENTUCKY

Rose Area

February 14, 2018

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Exhibit C (6)- Streets and Alleys

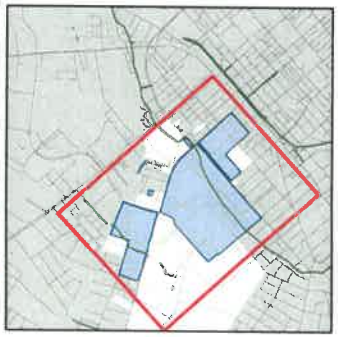
- Alley behind former Fazoli's
- Callahan Alley
- Columbia Avenue: Between Rose Street and Woodland Avenue
- Conn Terrace: Between Elizabeth Street and S. Limestone
- Davis Alley
- Dixie Court
- Elizabeth Street: Between Waller Avenue and Transcript Avenue
- Gazette Avenue: Between Press Avenue and S. Limestone
- Hilltop Avenue
- Leader Avenue
- Lexington Avenue: Between Avenue of Champions and E. Maxwell St.
- Linden Walk: Between Rose Lane and Euclid Avenue
- Pennsylvania Avenue
- Pennsylvania Court
- Press Avenue: Between Transcript Avenue and Virginia Avenue
- Rose Lane: Between Rose Street and Woodland Avenue
- Rose Street: Between Huguelet Dr. and Euclid Avenue
- S. Martin Luther King Blvd: Between Avenue of Champions and E. Maxwell St.
- Sellers Alley
- State Street: Between Elizabeth Street and S. Limestone
- Transcript Avenue: Between Press Avenue and S. Limestone
- University Avenue: Between Elizabeth Street and S. Limestone
- Warren Court
- Weidaman Alley:
- Woodland Avenue: Between Hilltop Avenue and Rose Lane

EXHIBIT D

Stormwater Infrastructure

Areas of UK Campus

- Pipe to be transferred to UK
- Storm Collection
- Storm Main
- Street
- Railroad
- Areas
- Parcel



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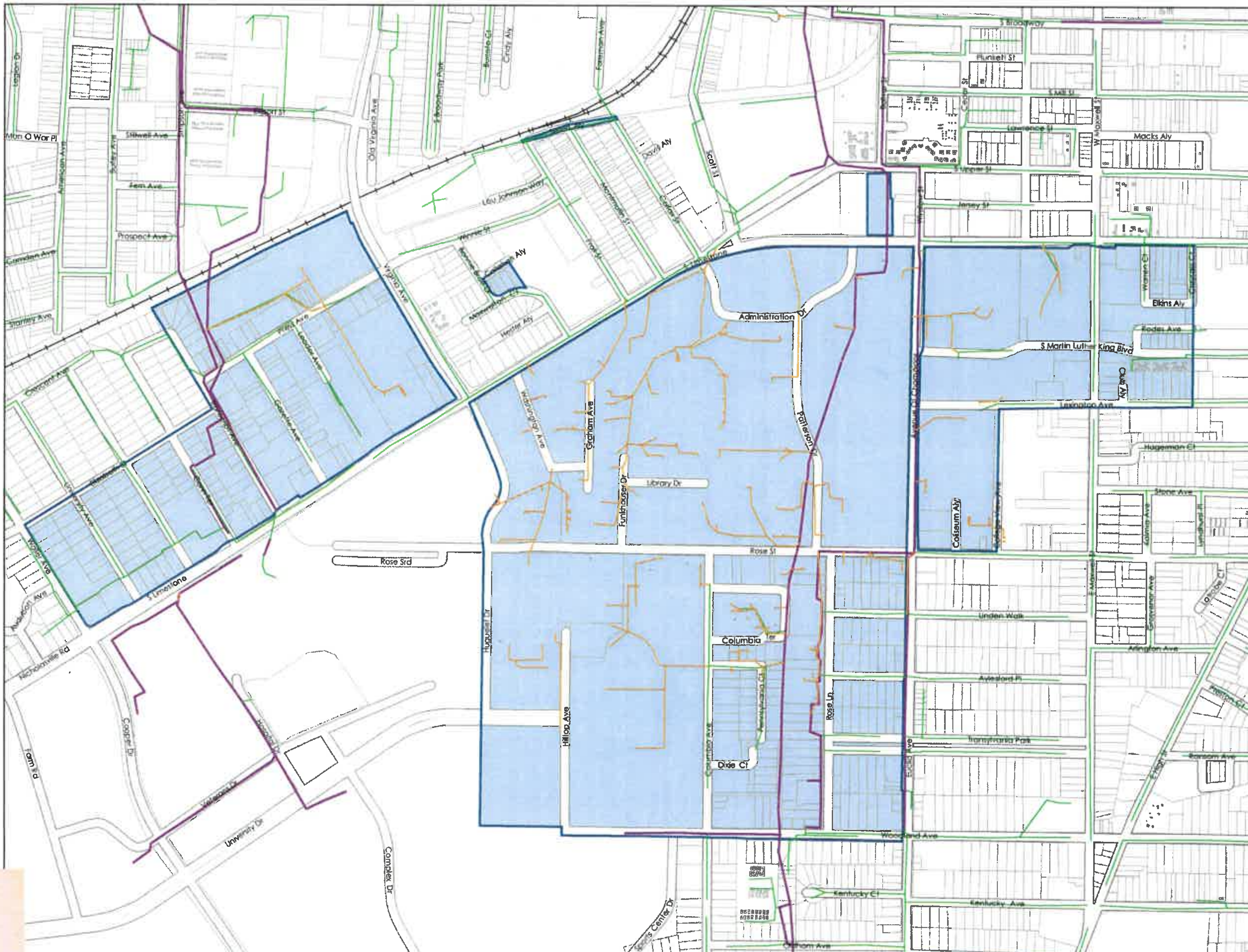


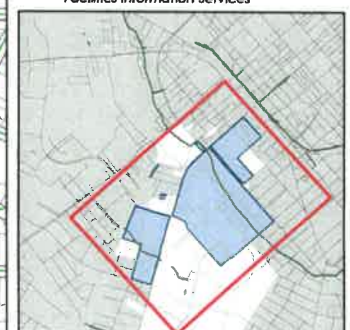
EXHIBIT E

Sanitary Sewer Infrastructure

Areas of UK Campus

- Pipe to be transferred to UK*
- LFUCG Collection
- LFUCG Trunk
- Street
- Railroad
- Areas
- Parcel

*SOURCE : University of Kentucky Facilities Information Services



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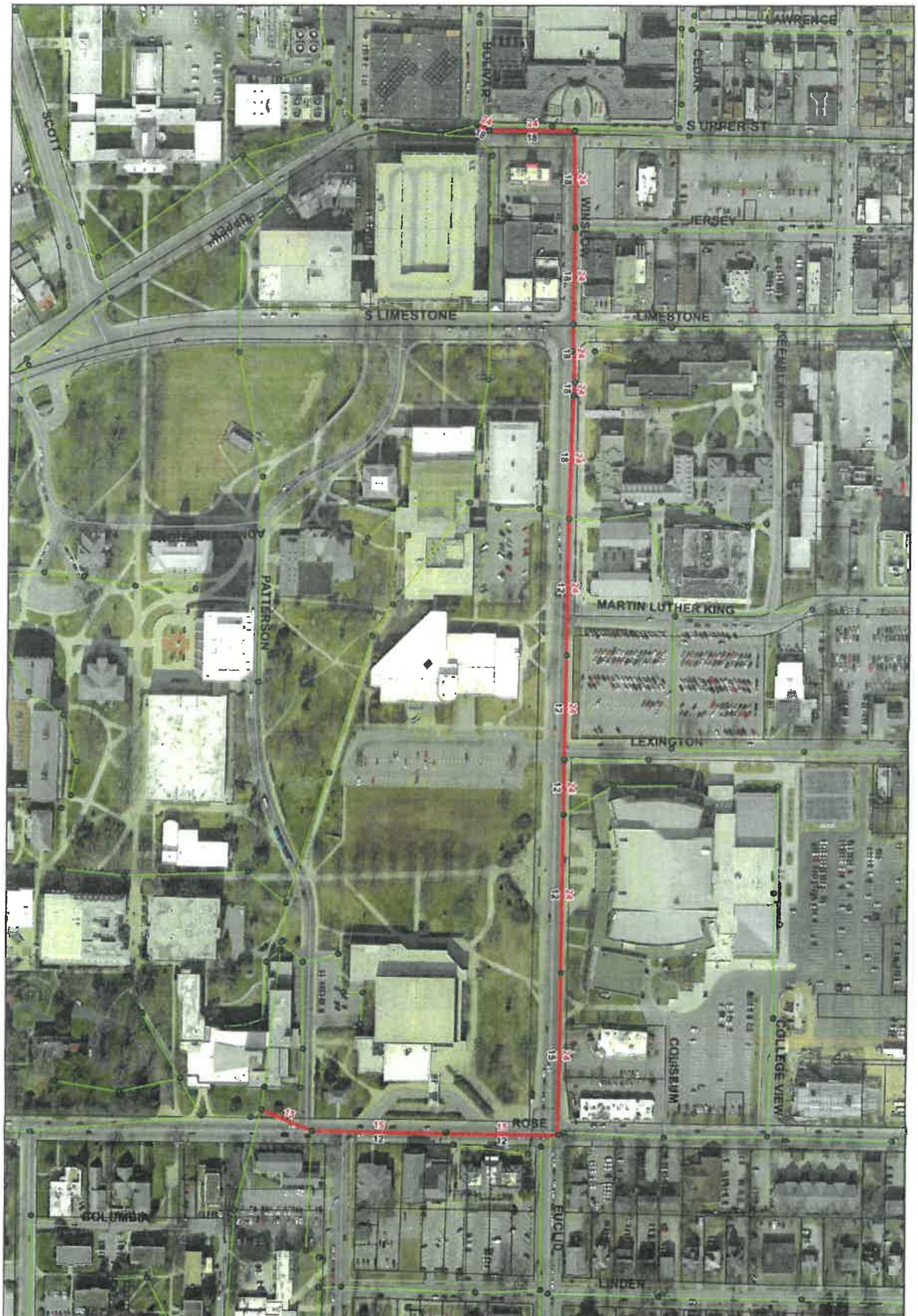

Town Branch Detailed Solution - UK Trunk D

Pipes

- Not Upsized
- Proposed New Line
- Potential Realignment
- Force Mains
- Appendix A SSOs
- Streets
- Major Roads
- Parcel Boundaries
- Major Sewershed
- Manholes
- Pump Stations

1" = 200'

G2-TB-7

EXHIBIT F-1

EXHIBIT F-1 (CONT)

EXHIBIT F-2

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION AT LEXINGTON

Eastern District of Kentucky
FILED
JAN 03 2011
AT LEXINGTON
LESLIE G WHITMER
CLERK U S DISTRICT COURT

UNITED STATES OF AMERICA and THE COMMONWEALTH OF KENTUCKY,	)	
Plaintiffs,	)	
v.	)	**Civil Action No. 5:06-cv-386**
LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT,	)	
Defendant.	)	

CONSENT DECREE

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B. Unpermitted Bypasses
C. Exceedances at LFUCG's WWTPs
D. Storm Water Quality Management Program, with its Appendices
E. Performance Standards
F. Cross-connections Relevant to Paragraph 15.A.
G. Capital Projects
H. List of Pumping Stations Relevant to Paragraph 15.C.
I. U.S. EPA Region 4 CMOM Methodology
J. Federal SEPs
K. Commonwealth Environmental Projects

INTRODUCTION

A. WHEREAS, Plaintiff, the United States of America ("United States"), by the authority of the Attorney General of the United States and through its undersigned counsel, acting at the request and on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), has filed the Complaint in this action in November 2006 seeking injunctive relief and civil penalties pursuant to Section 309 of the Clean Water Act, 33 U.S.C. § 1319, naming as defendant Lexington-Fayette Urban County Government ("LFUCG");

B. WHEREAS, Plaintiff, the Commonwealth of Kentucky ("Commonwealth"), on behalf of its Environmental and Public Protection Cabinet ("EPPC"), has joined in the Complaint and seeks injunctive relief and civil penalties for LFUCG's alleged violations of Kentucky Revised Statutes ("KRS") Chapter 224 and the regulations promulgated pursuant thereto;

C. WHEREAS, LFUCG is an urban county government organized pursuant to KRS Chapter 67A, which is defined as a "municipality" pursuant to 33 U.S.C. § 1362, and owns and operates a wastewater collection and transmission system and a separate storm sewer system in Lexington, Kentucky and Fayette County, Kentucky;

D. WHEREAS, the United States and the Commonwealth's Complaint alleges that Defendant LFUCG violated the Federal Water Pollution Control Act, also known as the Clean Water Act, 33 U.S.C. §§ 1251-1387 ("Clean Water Act", "CWA", or "Act");

E. WHEREAS, the Commonwealth is a plaintiff in this action and is joined as a party under Section 309(e) of the CWA, 33 U.S.C. § 1319(e). Whenever a municipality is a party to a civil action brought by the United States under Section 309, the CWA requires the State in which the municipality is located to be joined as a party;

F. WHEREAS, LFUCG's Sanitary Sewer System is (except for certain illicit cross-connections) separate from the LFUCG's storm water collection system. The Sanitary Sewer System transports wastewater to two publicly owned wastewater treatment plants, West Hickman Creek WWTP, and Town Branch WWTP, which are operated by LFUCG pursuant to KPDES Permit Numbers KY0021504 and KY0021491. In addition, LFUCG has been operating the Blue Sky WWTP (KPDES Permit Number KY0027286) under receivership obligations. The Blue Sky WWTP is a poorly-designed and inadequate facility which has experienced permit exceedances.

G. WHEREAS, LFUCG has reported to EPA and EPPC that it has identified 111 recurring locations, set forth in Appendix A, at which SSOs (including illicit cross-connections) and Unpermitted Discharges have been documented. In addition, LFUCG has reported to EPA and EPPC that a number of Unpermitted Bypasses, in which the Town Branch WWTP has discharged wastewater without required secondary treatment, have occurred as set forth in Appendix B. LFUCG has also reported to EPA and EPPC that a number of Exceedances have occurred at LFUCG's WWTPs as set forth on Appendix C. The United States and the Commonwealth contend that these SSOs, Unpermitted Discharges, Unpermitted Bypasses, and Exceedances are violations of the CWA, the Commonwealth's regulations implementing the CWA, and the relevant KPDES permits;

H. WHEREAS, this Consent Decree requires LFUCG to develop, submit, finalize and implement plans for the continued improvement of its wastewater collection and transmission system and the WWTPs, to eliminate Recurring SSOs, Unpermitted Discharges, Unpermitted Bypasses, and Exceedances;

I. WHEREAS, on November 12, 1999, EPPC issued LFUCG National Pollutant Discharge Elimination System ("NPDES") Permit No. KYS000002 ("MS4 Permit"), with an effective date of January 1, 2000. This permit authorized discharges from LFUCG's municipal separate storm sewer system ("MS4"), in accordance with certain specified conditions;

J. WHEREAS, in January 2004, EPA conducted a performance evaluation of LFUCG's MS4 program. Based on information developed by EPA during the inspection, and information developed by EPA as a result of information requests issued by EPA to LFUCG, pursuant to Section 308 of the CWA, EPA has identified various violations by LFUCG of its MS4 permit. EPA has further determined, that LFUCG's program for managing its MS4, as presently constituted, is inadequate to reduce the discharge of pollutants to the maximum extent practicable, as required by Section 402(p)(3)(B) of the CWA, 33 U.S.C. § 1342(p)(3)(B);

K. WHEREAS, this Consent Decree requires LFUCG to improve its MS4 program to ensure that it includes controls to reduce the discharge of pollutants to the maximum extent practicable, as required by the CWA, to implement the MS4 program, and to implement measures to comply with its MS4 permit;

L. WHEREAS, Fayette County Neighborhood Council (FCNC) filed a complaint in intervention in July 2007, and Lexington filed an answer in August 2007;

M. WHEREAS, the Parties to this Consent Decree have negotiated in good faith and have reached a settlement of the issues raised in the Complaint;

N. WHEREAS, LFUCG's agreement to this Consent Decree is not an admission of liability, and except for LFUCG's consent to jurisdiction and venue as provided in Paragraph 1 of this Consent Decree, nor is it an adjudication or admission of any fact or law;

O. WHEREAS, the Parties agree, and the Court finds, that settlement of the claims alleged in the Complaint without further litigation or trial of any issues is fair, reasonable and in the public interest;

NOW THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED as follows:

I. JURISDICTION AND VENUE

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, 1355, and 1367; Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b); and over the Parties. Venue lies in this District pursuant to Sections 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b); and pursuant to 28 U.S.C. § 1391(b) and 28 U.S.C. § 1395(a); because LFUCG is, and, at the time the action was commenced, was, located in, residing in, and doing business in this judicial district, and because the violations that are the subject of this action, and a substantial part of the events or omissions giving rise to the claims, occurred in this judicial district. For purposes of this Decree or any action to enforce this Decree, LFUCG consents to the Court's jurisdiction over this Decree or such action and over LFUCG, and consents to venue in this judicial district.

2. Notice of commencement of this action has been given to the Commonwealth of Kentucky pursuant to Section 309(b) of the Clean Water Act, 33 U.S.C. § 1319(b).

II. APPLICABILITY

3. The obligations of this Consent Decree apply to and are binding upon the United States, the Commonwealth, and LFUCG and any successor or other entities or persons otherwise bound by law.

4. LFUCG shall provide a written notice, either by hard-copy or by electronic mail, that a copy of this Consent Decree is posted on LFUCG's intranet or internet site, to appropriate officers, employees, and agents whose duties include compliance with any provision of this Decree, including, without limitation, the Mayor and LFUCG Council members, the Mayor's Chief of Staff, the LFUCG Commissioners, and non-clerical personnel of the Department of Environmental Quality. LFUCG shall also provide a hard copy or electronic copy of this Consent Decree to all successful bidders retained to perform work required under this Consent Decree. After the Effective Date of this Consent Decree, LFUCG shall condition any contract to perform such work upon performance of the work in conformity with the terms of this Consent Decree.

5. In any action to enforce this Consent Decree, LFUCG shall not raise as a defense the failure by any of its officers, directors, LFUCG Council members, employees, agents, or contractors to take any actions necessary to comply with the provisions of this Consent Decree.

6. No transfer of ownership or operation of any of the facilities governed by this Decree, whether in compliance with this Section or otherwise, shall relieve LFUCG of its obligation to ensure that the terms of the Decree are implemented, unless (a) the transferee agrees to undertake the obligations required by Sections VI and VII of the Decree and to be substituted for the Defendant as a Party under the Decree and thus be bound by the terms thereof and (b) Plaintiffs consent to the relieve Defendant of its obligations. The decision to refuse to approve the substitution of the transferee for the Defendant shall not be subject to judicial review. If LFUCG proposes to sell or transfer part or all of its ownership or operation of any facilities governed by this Decree, it shall advise the purchaser or transferee in writing of the

existence of this Consent Decree and provide a copy of the Consent Decree prior to such sale or transfer. LFUCG shall send a copy of such written notification to the United States and EPPC pursuant to Section XVII of this Decree (Notices) by certified mail, return receipt requested, at least forty-five (45) days (or a shorter period if the United States and LFUCG so agree in writing) before such sale or transfer. Any attempt to transfer ownership or operation of any facility governed by this Decree without complying with this Paragraph constitutes a violation of this Decree.

III. OBJECTIVES

7. It is the express purpose of the Parties in entering this Consent Decree to further the objectives of the CWA, as stated in Section 101 of the CWA, 33 U.S.C. § 1251, and to eliminate SSOs, Unpermitted Discharges, Unpermitted Bypasses and Exceedances, to eliminate and prevent CWA permit violations, and, specifically with respect to LFUCG's Storm Water Quality Management Program ("SWQMP"), ensure implementation of a SWQMP that reduces the discharge of pollutants to the maximum extent practicable, and require implementation of measures to ensure compliance with LFUCG's MS4 Permit.

IV. DEFINITIONS

8. Unless otherwise provided in this Decree, terms used in this Consent Decree that are defined in the CWA, or in regulations promulgated pursuant to that Act, shall have the meanings assigned to them in the CWA, or such regulations. Whenever the terms set forth below are used in this Consent Decree, the following definitions shall apply:

"Blue Sky WWTP" shall mean the wastewater treatment plant located at Blue Sky Parkway, Lexington, Kentucky, currently operated by LFUCG, which discharges to the

Boone Creek watershed, from outfall 001, pursuant to KPDES Permit No. KY0027286 issued to Blue Sky Sewer Service Company, Inc. The plant is being operated by LFUCG staff under receivership obligation provisions, established in an order entered on November 15, 2004 by the Franklin Circuit Court, Civil Action #01-C1-0162.

"Building Backup" shall mean a subcategory of SSOs which occurs when a wastewater backup occurs into a building and is caused by blockages, malfunctions, or flow conditions in the Sanitary Sewer System. A wastewater backup that is caused by a blockage or other malfunction of a Private Lateral is not a Building Backup.

"Capacity, Management, Operations, and Maintenance" or "CMOM" shall mean, for the purpose of this Consent Decree only, a flexible program of accepted industry practices to properly manage, operate and maintain sanitary wastewater collection, transmission and treatment systems, investigate capacity-constrained areas of these systems, and respond to SSO events.

"Clean Water Act" or "CWA" shall mean the Clean Water Act, formally entitled the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251-1387.

"Commonwealth" shall mean the Commonwealth of Kentucky.

"Complaint" shall mean the United States and the Commonwealth's Complaint.

"Consent Decree" or "Decree" shall mean this Decree and all its attachments.

"Day" (whether or not capitalized) shall mean a calendar day unless expressly stated to be a working day. In computing due dates under this Consent Decree, where the last day would fall on a Saturday, Sunday, or federal holiday, the period shall run until the close of business of the next working day.

"Effective Date" is defined in Section XVIII of this Decree.

"Eligible SEP Costs" include the costs of planning and implementing a Supplemental Environmental Project (SEP), but do not include overhead, administrative expenses, legal fees, or oversight by LFUCG staff of contractors.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"EPPC" shall mean the Environmental and Public Protection Cabinet of the Commonwealth of Kentucky.

"Exceedance" shall mean any discharge from one of LFUCG's WWTPs which contains any pollutant at a level which exceeds an effluent limit in the KPDES Permit for such WWTP, and which is not otherwise authorized under such KPDES Permit.

"Excessive Inflow/Infiltration" or "Excessive I/I" shall mean the Inflow/Infiltration ("I/I") that LFUCG determines can be cost-effectively eliminated as determined by a cost-effectiveness analysis that compares the costs of eliminating the I/I with the total costs for transportation and treatment of the I/I (including capital costs of increasing transmission and treatment capacity, and resulting operating costs).

"Force Main" shall mean all sanitary sewer lines that operate under pressure due to pumping of sanitary wastewater at a pump station except for those sanitary sewer lines that serve a single structure or building.

"Gravity Sewer Line" shall mean a pipe that receives, contains and conveys wastewater not normally under pressure, but is intended to flow unassisted under the influence of gravity. Gravity sewers are typically not intended to flow full under normal operating

conditions.

"I/I" shall mean the total quantity of water from Infiltration and Inflow without distinguishing the source.

"Infiltration" as defined by 40 C.F.R. § 35.2005(b)(20) shall mean water other than wastewater that enters a sanitary sewer system (including sewer service connections and foundation drains) from the ground through such means as defective pipes, pipe joints, connections, or manholes.

"Inflow" as defined by 40 C.F.R. § 35.2005(b)(21) shall mean water other than wastewater that enters a sanitary sewer system (including sewer service connections) from sources such as, but not limited to, roof leaders, cellar drains, yard drains, area drains, drains from springs and swampy areas, manhole covers, cross connections between storm sewers and sanitary sewers, catch basins, cooling towers, storm water, surface runoff, street wash waters, or drainage.

"KPDES" shall mean Kentucky Pollutant Discharge Elimination System, as established by 401 KAR Chapter 5 and KRS Chapter 224.

"LFUCG" shall mean the Lexington-Fayette Urban County Government, a municipality within the meaning of that term in CWA, established under the laws of the Commonwealth of Kentucky.

"LFUCG's WWTPs" shall mean West Hickman Creek WWTP and the Town Branch WWTP.

"Major Gravity Line" shall mean any of the following: all Gravity Sewer Lines that are twelve inches in diameter or larger; all eight-inch Gravity Sewer Lines that are necessary

to accurately represent flow attributable to a service area in each of the Sewersheds; all Gravity Sewer Lines that convey wastewater from one Pumping Station service area to another pumping station service area; and all Gravity Sewer Lines that substantially contribute, or that LFUCG knows will likely substantially contribute, to Recurring SSOs.

"MS4" shall mean LFUCG's municipal separate storm sewer system, as that term is defined in 40 C.F.R. § 122.26 (b)(8).

"MS4 Permit" shall mean KPDES Permit No. KYS000002 ("MS4 Permit"), with an effective date of January 1, 2000, and any subsequently issued permit, which authorizes discharges from LFUCG's MS4 in accordance with conditions specified therein.

"NPDES" shall mean National Pollutant Discharge Elimination System, as established by 33 U.S.C. § 1342.

"One Hour Peak Flow" as that term is used in Paragraph 16.B for the CMOM Capacity Assurance Program only, shall mean the greatest flow in a sewer averaged over a sixty (60) minute period at a specific location expected to occur as a result of a representative 2-year 24-hour storm event.

"Paragraph" shall mean a portion of this Consent Decree identified by an Arabic numeral.

"Parties" shall mean the parties to this Consent Decree: the United States, the Commonwealth, and LFUCG.

"Peak Flow" as that term is used in Subparagraphs 15.D- 15.G, shall be determined based upon sound engineering judgment and commonly accepted design practice.

"Private Lateral" shall mean that portion of a sanitary sewer conveyance pipe,

including that portion in the public right of way, that extends from the wastewater main to the single-family, multi-family, apartment, other dwelling unit, business, industry, institution or structure to which wastewater service is or has been provided. Private Laterals do not include connector joints at LFUCG's sewer line.

"Pumping Station" shall mean all pumping stations owned or operated by LFUCG except for pump stations that serve a single structure or building, and except for the pump station serving Southland Christian Church in Jessamine County.

"Recurring SSO" shall mean, for the purpose of this Consent Decree only, an SSO that occurs in the same location more than once per twelve (12) month rolling period.

"Reporting Year" shall mean each annual period commencing at the start of LFUCG's fiscal year on July 1 of each year.

"Reporting Year Covered by this Consent Decree." A Reporting Year is covered by this Consent Decree if any part of the Reporting Year falls after the Effective Date of, and before the termination of, this Decree.

"Sanitary Sewer Overflow" or "SSO" shall mean, for the purpose of this Consent Decree only, any discharge to waters of the United States from the Sanitary Sewer System through point sources not specified in any KPDES permit (otherwise known as "Unpermitted Discharges"), as well as any release of wastewater from the Sanitary Sewer System to public or private property that does not reach waters of the United States, such as a release to a land surface or structure that does not reach waters of the United States; provided, however, that releases or wastewater backups into buildings that are caused by blockages, flow conditions, or malfunctions in a Private Lateral, or other piping or conveyance system that is not owned or

operationally controlled by LFUCG are not SSOs. SSOs include any cross-connections between LFUCG's Sewer System and its MS4 which allow wastewater to pass from the Sanitary Sewer System to the MS4, but does not include exfiltration that does not reach waters of the United States, or land surface or structures.

"Sanitary Sewer System" shall mean the WCTS owned or operated by LFUCG designed to collect and convey municipal sewage (domestic, commercial and industrial) to a WWTP. The Sanitary Sewer System does not include LFUCG's MS4.

"Satisfactory Completion" shall mean that LFUCG shall timely complete the required work on supplemental environmental projects ("SEPs") in accordance with the SEP descriptions and specifications set forth in Appendix J and subsequently approved statements of work or work plans for the SEPs.

"Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

"Sewershed" shall mean a section of LFUCG's WCTS that is a distinct drainage or wastewater collection area and designated as such by LFUCG. For purposes of this Consent Decree, the Sewersheds have been grouped as follows: Group One consists of West Hickman, East Hickman, and Wolf Run Sewersheds; Group Two consists of Cane Run and Town Branch Sewersheds; and Group Three consists of North Elkhorn and South Elkhorn Sewersheds.

"Storm Water Quality Management Program" or "SWQMP" shall mean LFUCG's proposed program to manage municipal storm water quality as described in Appendix D to this Consent Decree, which may be modified from time to time pursuant to LFUCG's MS4 Permit as referenced herein.

"Ten States Standards" shall mean the applicable edition, incorporated by reference by Kentucky Regulation 401 KAR 5:005 § 29, of the "Recommended Standards for Wastewater Facilities: Policies for the Design, Review, and Approval of Plans and Specifications for Wastewater Collection and Treatment Facilities, Wastewater Committee of the Great Lakes - Upper Mississippi River Board of State and Provincial Public Health and Environmental Managers."

"Town Branch WWTP" shall mean the wastewater treatment plant located at 301 Lisle Industrial Avenue, Lexington, Kentucky, owned and operated by LFUCG, which discharges to Town Branch Creek from outfall 001 and pursuant to KPDES Permit No. KY0021491.

"United States" shall mean the United States of America, acting on behalf of EPA.

"Unpermitted Bypass" shall mean any discharge to the waters of the United States from any of LFUCG's WWTPs which constitutes a prohibited bypass as defined in 40 C.F.R. § 122.41(m), and 401 KAR 5:065 Section 1(13).

"Wastewater Collection and Transmission Systems" or "WCTS" shall mean the municipal sanitary wastewater collection and transmission systems, including all pipes, force mains, gravity sewer lines, lift stations, pumping stations, manholes and appurtenances thereto, which are owned or operated by LFUCG.

"WWTP" shall mean wastewater treatment plant.

"West Hickman Creek WWTP" shall mean the wastewater treatment plant located

at 645 West Hickman Plant Road/Ash Grove Pike, Nicholasville, Jessamine County, Kentucky, owned and operated by LFUCG, which discharges to West Hickman Creek from outfall 001 and pursuant to KPDES Permit No. KY0021504.

V. CIVIL PENALTY

9. Within thirty (30) days after the Effective Date of this Consent Decree, LFUCG shall pay a civil penalty to the United States of $425,000, plus interest accruing from the date on which this Decree is entered with the Court, at the rate specified in 28 U.S.C. § 1961, as of the Effective Date. Payment to the United States shall be made by FedWire Electronic Funds Transfer ("EFT") to the U.S. Department of Justice in accordance with instructions to be provided to LFUCG following lodging of the Consent Decree by the Financial Litigation Unit of the U.S. Attorney's Office for the Eastern District of Kentucky.

10. At the time of payment required by this Section, LFUCG shall simultaneously send written notice of payment and a copy of any transmittal documentation to the United States and to EPPC in accordance with Section XVII of this Decree (Notices). The notices shall reference Civil Action Number 5:06-cv-386.

VI. COMPLIANCE MEASURES RELATING TO STORM SEWER SYSTEM

11. SWQMP. LFUCG shall implement the SWQMP attached as Appendix D to this Consent Decree, or as subsequently amended pursuant to the KPDES permitting process. The SWQMP will be proposed by LFUCG as a component program of its KPDES Permit for its MS4. The SWQMP contains lists of "Measurable Goals," which describe a variety of activities to be implemented by LFUCG pursuant to its KPDES Permit in order to reduce pollution levels in its municipal storm water. Selected Measurable Goals from the SWQMP are listed on

Appendix E attached to this Consent Decree as "Performance Standards" for purposes of this Consent Decree. Notwithstanding any changes to the SWQMP in the KPDES permitting process, for purposes of compliance with this Consent Decree, LFUCG shall during the term of this Section VI of the Consent Decree, continue to comply with the Performance Standards listed on Appendix E to this Consent Decree. The Performance Standards listed on Appendix E shall be enforceable under this Consent Decree. Any failure to comply with a Performance Standard listed on Appendix E shall be subject to stipulated penalties as provided in Section XI of this Consent Decree. The Performance Standards listed on Appendix E to this Consent Decree shall continue to be complied with by LFUCG during the term of this Section VI of the Consent Decree unless EPA and EPPC both agree in writing to the amendment or deletion of a Performance Standard. Except for the Performance Standards, the detailed requirements of the SWQMP are not specifically enforceable under this Consent Decree; however, a broad failure to implement programs described in the SWQMP shall be subject to enforcement under this Consent Decree. In addition to implementation of the SWQMP and compliance with those Performance Standards identified above, LFUCG shall also, during the term of this Section VI of the Consent Decree, comply with the requirements of Paragraphs 12 through 14 of this Consent Decree.

12. Legal Authority. No later than fifteen (15) months from the Effective Date of this Consent Decree, LFUCG shall adopt and/or maintain in force ordinances that:

A. Confer authority on LFUCG to assess penalties for violation of any Illicit Discharge Program, Industrial Storm Water Management Program, Construction Site Storm Water Management Program, and Post-Construction Storm Water Management Program

requirement. Maximum penalties that may be assessed under such ordinances for each such violation shall be at least $10,000 per day of violation.

B. Confer authority on LFUCG to issue stop-work orders compelling the cessation of construction activity at any Active Construction Site as defined in the SWQMP that is in violation of any LFUCG ordinance relating to storm water management at Active Construction Sites. LFUCG shall be authorized by such ordinances to issue such stop-work orders without first appearing before a judge.

C. Confer authority on LFUCG to issue enforceable orders compelling the elimination of any illicit connections to its MS4 without first appearing before a judge.

D. Confer authority on LFUCG to require Industrial Facilities, and High Risk Commercial Facilities as defined in the SWQMP, to develop and implement storm water pollution prevention plans ("SWPPPs"), and confer authority on LFUCG to require selected Industrial Facilities and High-Risk Commercial Facilities with the potential to discharge pollutants in substantial amounts to the MS4 to develop and implement a stormwater monitoring program that includes providing the monitoring results to LFUCG.

E. Confer authority on LFUCG to require owners of privately-owned retention and detention basins and other privately-owned storm water control structures to perform necessary maintenance and repairs on such structures.

13. Funding. Beginning with its first fiscal year after the Effective Date of this Consent Decree, LFUCG shall budget funds for each operating year in an amount reasonably expected to be sufficient to implement all measures in the SWQMP, comply with the MS4 Permit, and comply with all the requirements of this Section VI of the Consent Decree

(Compliance Measures Relating to Storm Sewer System). In order to ensure that adequate funds are budgeted as required by this Paragraph, LFUCG shall, within two (2) years of the Effective Date of this Consent Decree, establish a storm water management fee funding mechanism that will charge and collect fees for storm water management services, which may be in addition to other funding sources. Nothing herein shall preclude LFUCG from using the storm water management fee for the management of storm water generally, including to fund flood control projects, so long as adequate funding is maintained to ensure compliance with this Section VI of the Consent Decree.

14. Personnel, Training and Equipment.

A. LFUCG shall maintain adequate personnel and/or retain sufficient contractors to comply with Section VI of this Consent Decree. LFUCG shall ensure that all personnel with responsibilities for compliance with this Section VI of this Consent Decree (Compliance Measures Relating to Storm Sewer System) receive necessary and appropriate training to carry out their obligations for MS4 program implementation. LFUCG shall provide a workshop designed to educate LFUCG personnel with responsibilities for compliance with this Section VI of this Consent Decree (Compliance Measures Relating to Storm Sewer System) at least one (1) time per calendar year.

B. LFUCG shall lease, contract for, rent, or own equipment needed to comply with this Section VI of this Consent Decree (Compliance Measures Relating to Storm Sewer System).

VII. COMPLIANCE MEASURES RELATING TO SANITARY SEWER SYSTEM

15. LFUCG shall carry out assessments and engineering analyses necessary to

identify all measures needed to ensure that LFUCG's Sanitary Sewer System complies with the requirements of the Clean Water Act, the regulations promulgated thereunder, the Kentucky pollution control laws, the regulations promulgated under such laws, and National Pollutant Discharge Elimination System Permits Nos. KY0021504 and KY0021491 and then shall implement all such measures in a timely manner, with the objective of eliminating all cross-connections and Recurring SSOs from the Sanitary Sewer System and Unpermitted Bypasses at the LFUCG's WWTPs. LFUCG shall complete the requirements identified below per the identified schedules based on three (3) Sewershed Groups with Group One consisting of West Hickman, East Hickman, and Wolf Run Sewersheds, Group Two consisting of Cane Run and Town Branch Sewersheds, and Group Three consisting of North Elkhorn and South Elkhorn Sewersheds. This Paragraph 15 shall not address the collection and transmission system serving the Blue Sky WWTP.

A. Capital Improvement Projects and Short Term SSO Measures

(i) LFUCG shall eliminate the cross-connections identified in Appendix F within thirty (30) days of the lodging of the Consent Decree.

(ii) LFUCG shall implement and complete the following capital projects described further on Appendix G by the dates specified below:

a. North Elkhorn Force Main Diversion Project to be completed within twenty-four (24) months of lodging date of the Consent Decree.

b. South Elkhorn Pump Station and Force Main Upgrade to he completed within thirty (30) months of the lodging date of the Consent Decree.

c. Deep Springs Pump Station Upgrade to be completed within thirty (30) months of the

completion date of the North Elkhorn Force Main Diversion Project above, but no later than fifty -four (54) months from lodging.

d. Dixie Pump Station Upgrade to be completed within thirty (30) months of the completion date of the North Elkhorn Force Main Diversion Project above, but no later than fifty-four (54) months from lodging.

B. Sewer System Assessment ("SSA")

Within ninety (90) days of Consent Decree lodging, LFUCG shall submit to EPA/EPPC for review and comment, a Sewer System Assessment Work Plan ("SSA Work Plan") to: a) identify Sewersheds with significant I/I, such that these conditions are causing and/or contributing to Recurring SSOs or wet weather Unpermitted Bypasses at a WWTP; b) identify and quantify sources of I/I within the Sewersheds determined to have significant I/I rates; c) identify and quantify Recurring SSOs; d) identify cross-connections and unauthorized connections; and e) identify physical degradation of the Sanitary Sewer System, including general pipe condition and condition of force mains, that causes or contributes to Recurring SSOs.

(i) The SSA shall involve a) the use of appropriate existing attribute data, appropriate existing WWTP flow data, and as necessary, the collection and use of additional physical attribute data for the Sanitary Sewer System; b) the use of appropriate existing rainfall and flow data, and as necessary, the collecting and use of additional flow and rainfall data for the WCTS; c) the use of appropriate existing monitoring of groundwater at appropriate locations throughout the Sanitary Sewer System, and as necessary, the collecting and use of additional groundwater monitoring at appropriate locations throughout the Sanitary Sewer

System; d) the physical investigation of the causes of I/I and Recurring SSOs; and e) the documentation of the condition of the portions of the Sanitary Sewer System causing or contributing to Recurring SSOs.

(ii) Monitoring. The SSA Work Plan developed by LFUCG shall include a schedule for the installation of sewer flow, WWTP flow, groundwater level, and rainfall monitoring equipment; completion of monitoring activities; and completion of necessary investigative activities. In performing the SSA, LFUCG shall utilize existing sewer flow, WWTP flow, groundwater level, and rainfall monitoring and characterization data only to the extent that it is appropriate, both in terms of quality and location. The SSA Work Plan shall a) identify existing data to be utilized, b) identify additional data to be collected, and c) describe in detail how together the existing and proposed additional data will satisfy the objectives of the SSA.

(iii) Schedule. The SSA shall be completed in accordance with the following schedule: a) for Group One sewersheds, thirty-six (36) months after lodging of the Decree; b) for Group Two sewersheds, forty-two (42) months after lodging of the Decree; and c) for Group Three sewersheds, forty-eight (48) months after lodging of the Decree. LFUCG shall implement the plan in accordance with the schedule upon submission of such plan and schedule to EPA/EPPC. LFUCG may request an extension of these deadlines from EPA and EPPC where drought or other weather conditions prevent certain activities required under the SSA from being completed, such as excess rain preventing smoke testing from being completed. LFUCG shall provide written notice to EPA and EPPC of its justification for such extension of time.

(iv) Guidance Documents. LFUCG shall perform the SSA in accordance with

sound engineering practice and the following documents as guidance: a) *Handbook: Sewer System Infrastructure Analysis and Rehabilitation*, EPA/625/6-91/030, 1991; b) *Existing Sewer Evaluation and Rehabilitation*, WEF MOP FD-6, 1994; c) *A Guide to Short Term Flow Surveys of Sewer Systems*, WRC Engineering (Undated), and d) *the National Association of Sewer Service Companies (NASSCO) "Manual of Practice"*. The aforementioned documents are intended to provide guidance on the methodologies and techniques to be used in identifying sources of I/I, however, that guidance shall be applied in a manner consistent with the purpose of eliminating SSOs.

(v) Sub-basins. To identify sources of significant I/I, the Sanitary Sewer System should be divided into appropriate sewer sub-basins. Sufficient "first round" rainfall and flow data at key locations in each sub-basin should be collected to allow the characterization of each sub-basin's I/I contribution. The sub-basins should then be prioritized, based on I/I contribution and wet weather peaking factors, and subsequent field investigations carried out in a sufficient fraction of the Sanitary Sewer System to allow the preparation of a Sanitary Sewer System and WWTP Remedial Measures Plan (as described in Paragraph 15.G) that has the objective of eliminating all Recurring SSOs. Investigative activities, such as CCTV inspection, should focus on those portions of the Sanitary Sewer System that cause or contribute to Recurring SSOs.

(vi) The SSA shall include (and the SSA Study Work Plan shall describe) at a minimum the following requirements:

a. Data Management: A description of the data management system that will organize, analyze, and report existing data to be utilized and the categories of data

that LFUCG will be collecting in accordance with this Paragraph;

b. Quality Control/Quality Assurance: A description of the quality assurance and quality control program LFUCG will follow to ensure the accuracy and reliability of data collected in accordance with this Paragraph;

c. Data Review: A review of existing data concerning Recurring SSOs, sewage flows, WWTP and Sanitary Sewer System attributes (e.g., pipe diameters, pipe segment lengths, diversion structure characteristics, catchment characteristics, invert elevations, pipe interior roughness coefficients, etc.), and rainfall and groundwater levels; and an evaluation of the accuracy, completeness and adequacy of that data for purposes of supporting the characterization of the Sanitary Sewer System's condition and sources of extraneous wet weather flow. The data review will further identify the additional data needed to allow the SSA to satisfy the objectives stated herein;

d. Rainfall and Flow Monitoring: As part of the SSA, LFUCG shall carry out additional dry and wet weather rainfall flow monitoring as needed to satisfy the requirements of this Paragraph. Where the review of existing data under Paragraph 15.B.(vi)c above, is found to be adequate to satisfy the requirements of this Consent Decree, LFUCG may use such data to complete the SSA in lieu of the collection of new and additional data. Dry weather monitoring shall be carried out so as to allow the characterization of base flows and Infiltration rates. Wet weather monitoring shall be carried out following events of sufficient duration and intensity to cause significant I/I in the system to allow the collection

of sufficient rainfall and flow monitoring data, as defined by the SSA Work Plan, to allow the prioritization of sub-basins described above. The SSA Work Plan shall also describe the locations, types and rationale for placement of rain gauges, flow monitors, and any other equipment required by this Section.

e. Rainfall Gauges: To monitor the contribution from rainfall to a Sewershed within LFUCG's jurisdictional boundaries, LFUCG shall use a network of rain gauges in accordance with industry standards and sound engineering practice.

f. Flow Monitoring: Flow data shall be collected using a system of permanent or temporary flow monitors, or a combination thereof, as determined by LFUCG in the SSA Work Plan. Such monitors shall be placed at locations in the Sanitary Sewer System necessary to adequately characterize flow from each Sewershed. LFUCG shall ensure that the flow monitors are inspected, maintained, and calibrated as necessary, to maintain a system-wide up-time of ninety (90) percent. Further, the flow monitoring shall be installed and operated in accordance with the equipment manufacturers' recommendations and sound engineering practice.

(vii) Following the completion of, or where practicable, concurrent with, any necessary flow, rain and groundwater monitoring described above, LFUCG shall perform field investigative activities in Sewersheds determined to have significant I/I and any Sewersheds determined to cause or contribute to Recurring SSOs and wet weather-related bypasses at the WWTP. The field investigative activities shall be designed to locate and allow estimation of the wet weather flows associated with individual sources of I/I, or shall identify physical degradation of the Sanitary Sewer System that causes or contributes to Recurring SSOs. The field

investigative activities shall include as appropriate:

a. Further flow monitoring to isolate sources of I/I. Such flow monitoring will be carried out as specified above in this Paragraph;

b. Smoke testing;

c. Visual inspections of pipes and manholes;

d. Dye testing;

e. Night flow isolation;

f. CCTV inspection; and

g. Building inspections.

(viii) These further investigative activities shall be sufficient to allow detailed characterizations of all significant sewer defects in sewer sub-basins with significant I/I and Recurring SSOs, and to support the development of the Capacity Assessment Report in Paragraph 15.F. below, and the identification of remedial measures necessary to satisfy the objectives of the Capacity Assessment Report. In conducting the field investigative activities, LFUCG shall use sound engineering practice and conduct activities consistent with the guidance provided in the appropriate sections of a) *Handbook: Sewer System Infrastructure Analysis and Rehabilitation*, EPA/625/6-91/030, 1991; *b) Existing Sewer Evaluation and Rehabilitation,* WEF MOP FD-6, 1994; c) *the National Association of Sewer Service Companies (NASSCO) "Manual of Practice"*.

C. Pumping Station Design, Capacity, and Equipment Condition Adequacy Evaluation

Within one (1) year of Consent Decree lodging, LFUCG shall carry out an evaluation of the design capacity, current effective capacity, equipment condition and operational redundancy

in its Pumping Stations. For the purpose of Paragraph 15.C., Pumping Stations shall mean those pumping stations identified in Appendix H of this Consent Decree.

(i) This evaluation shall consider the following criteria:

a. Adequacy of station capacity, as described in the "Pumping Systems" chapter of the most current version of WEF's Manual of Practice FD-4, "Design of Wastewater and Stormwater Pumping Stations";

b. Critical response time, defined as the time interval between activation of the high wet well level alarm and the first SSO, under peak flow conditions;

c. Adequacy of station condition, based upon both physical inspection and recent operating and mechanical failure history during at least the past five years preceding the lodging date of the Consent Decree;

d. Adequacy of station design and equipment, including redundancy of pumps and electrical power supply, and other equipment installed, based upon the Ten State Standards; and

e. The ability of maintenance personnel to take corrective action within the critical response time calculated for each Pumping Station.

(ii) LFUCG shall include in the SSA Report, referenced in Sub-Section F below, detailed information regarding the criteria specified above for each of its Pumping Stations. In particular, the SSA, Pump Station, Capacity Assessment, and Hydraulic Model Report shall:

a. Describe each Pumping Station;

b. Provide detailed information regarding the results of the evaluation of each Pumping Station;

c. Provide detailed information about its backup power and emergency pumping capability at each of its Pumping Stations;

d. Provide information regarding lightning strike protection equipment at each Pumping Station;

e. Provide detailed descriptions of its history of Pumping Station failures, including power-loss-related and lightning strike-related SSOs during the past five (5) years preceding the lodging date of the Consent Decree;

D. Capacity Assessment

(i) Within six (6) months of Consent Decree lodging, LFUCG shall provide a Capacity Assessment Work Plan for EPA/EPPC review and comment that describes how LFUCG will assess the capacity of the Sanitary Sewer System and WWTPs. The Capacity Assessment shall include all pumping stations, all Major Gravity Lines, all Force Mains and syphons and their respective related appurtenances, all Recurring SSO points, and any other portions of the Sanitary Sewer System that must be assessed so as to allow a technically-sound evaluation of the causes of Recurring SSOs or wet-weather Unpermitted Bypasses at the WWTPs. The Capacity Assessment Work Plan shall also include a schedule for completion no later than three (3) months before the dates provided for completion of the SSA in Paragraph 15. B.(iii), LFUCG shall provide the results of the Capacity Assessment in the SSA Report referenced in Sub-Section F below.

(ii) The Capacity Assessment shall specifically identify, at a minimum, the

hydraulic capacities of the portions of the Sanitary Sewer System identified above, and compare those capacities to existing and future projected average and peak dry flow and Peak Flow. (Future projected flows as used in this Section VII shall be estimated consistent with accepted industry standards and/or local practice for design purposes.) This assessment shall identify, within the aforementioned portions of LFUCG's WCTS, those portions of the WCTS that are expected to cause or contribute to SSOs, Bypasses and/or overloading at the WWTP under existing and projected future, average and peak dry flow and Peak Flow, and the degree to which those portions experience or cause, under current or projected future conditions, SSOs, Bypasses and/or overloading at the WWTP.

(iii) As part of the Capacity Assessment, LFUCG shall use the information it is required to develop pursuant to this Paragraph to assess existing and future projected capacity of the Sanitary Sewer System and the ability of the Sanitary Sewer System to transmit Peak Flows experienced by and predicted for the Sanitary Sewer System.

E. Hydraulic Model

(i) LFUCG shall develop a computerized model of the Sanitary Sewer System (the "Model") using a hydraulic modeling software package. LFUCG shall use the Model in the assessment of the hydraulic capacity of the Sanitary Sewer System, and in the identification of appropriate remedial measures to address capacity and condition limitations identified in its Sanitary Sewer System. LFUCG shall develop the Model to provide a detailed understanding of the response of the Sanitary Sewer System to wet weather events and an evaluation of the impacts of proposed remedial measures and removal of I/I flow, as follows:

a. LFUCG shall configure the Model to accurately represent LFUCG's

Sanitary Sewer System, in accordance with sound engineering practice. LFUCG may model its Sanitary Sewer System in different levels of detail, as necessary to identify the causes of all known Recurring SSOs, and to assess proposed remedial measures with the goal to eliminate those Recurring SSOs. LFUCG's Model shall include as a minimum: (i) all Major Gravity Lines; (ii) Pumping Stations; (iii) locations with Recurring SSOs; and (iv) Force Mains.

b. LFUCG shall configure the Model using adequate, sufficiently accurate and current physical data of the Sanitary Sewer System, such as invert and ground elevations, pipe diameters, slopes, pipe run lengths, Manning roughness factors, manhole sizes and configurations, and pumping station performance factors. In particular, LFUCG shall field verify the physical data identified in the SSA Work Plan to allow calibration of the Model.

c. LFUCG shall calibrate the Model using appropriate rainfall data, actual hydrographs and flow data. LFUCG shall use at least two (2) separate data sets for such calibration. As part of the calibration process, LFUCG shall either use existing sensitivity analyses for the selected model, or carry out its own sensitivity analyses, such that calibration effectiveness is maximized.

(ii) Within one hundred twenty (120) days of Consent Decree lodging, LFUCG shall develop and submit to EPA/EPPC for review and comment, the Hydraulic Model Report which shall include:

a. A description of the Model which shall be a widely-accepted model such as EPA's SWMM Model or InfoWorks or one of the widely accepted commercial variants;

b. Digitized map(s) and schematics that identify and characterize the portions (including the specific gravity sewer lines) of the Sanitary Sewer System that shall be included in the Model;

c. Identification of input data to be used;

d. Configuration of the Model;

e. Procedures and protocols for performance of sensitivity analyses (*i.e.*, how the Model responds to changes in input parameters and variables);

f. Procedures for calibrating the Model to account for values representative of the Sanitary Sewer System and WWTPs using actual Sanitary Sewer System and WWTP data (*e.g.*, flow data);

g. A schedule for complete implementation of the Model.

(iii) LFUCG shall implement the Model, and as part of the SSA Report referenced in Sub-Section F below, include a summary of activities undertaken to configure and calibrate the Model.

F. Reporting

(i) Within thirty (30) days following the completion of the SSA for each Sewershed Group, as set forth in Paragraph 15.B.(iii) above, LFUCG shall submit an SSA Report presenting the information required in Paragraph 15.B, and summarizing the results of the

SSA, Pumping Station Design and Equipment Condition Adequacy Evaluation, the Capacity Assessment, and the Model, to EPA/EPPC for review and comment.

(ii) The SSA Report shall include a thorough analysis of historical and current flow monitoring, inspection, rainfall and other data, including data collected during the aforementioned studies, and shall in general: a) identify Sewersheds with Excessive I/I, such that these conditions are causing and/or contributing to Recurring SSOs and wet-weather Unpermitted Bypasses at the WWTPs; b) identify and quantify sources of I/I within the Sewersheds determined to have Excessive I/I rates; c) identify and quantify Recurring SSOs; d) identify portions of the Sanitary Sewer System in which physical degradation of the Sanitary Sewer System is causing or contributing to Recurring SSOs; and e) identify cross-connections and unauthorized connections.

(iii) The SSA Report shall also include the following information:

a. Determination of existing flows for each Sewershed and sub-basin within the Sanitary Sewer System;

b. Average and peak daily dry weather flow;

c. Average dry weather Infiltration rate (in gpd/inch diameter-mile);

d. Peak Flow and peaking factors (the ratio of measured peak flow to average dry weather flow);

e. Identification of portions of the Sanitary Sewer System within the Sewershed experiencing levels of I/I that cause or contribute to Recurring SSOs and wet-weather Unpermitted Bypasses at the WWTPs;

f. Identification of specific sources of I/I to the Sanitary Sewer System, if

identifiable, by manhole/line segment, street address, type (Infiltration or Inflow), source (*e.g.*, "wall leakage"), and estimated flow from the source, if identifiable;

g. A summary of flow monitoring activities, to include, at a minimum, a map showing the delineation of the Sewershed: the location and type of each flow meter, problems encountered and deviations from the SSA Work Plan, and a description of flow monitor calibration activities, including any scatter graphs and calibration and verification graphs;

h. A summary of field investigative activities performed in each sub-basin, to include, at a minimum: type of activity; number of activities performed (*e.g.*, "100 out of 500 manholes inspected in Sub-basin 1A"), observations made under each activity (inspection procedure), and summaries of the results in each sub-basin;

i. A summary of the structural defects identified in the Sanitary Sewer System to include, at a minimum: number of each type of defect by line segment, manhole number or street address, and estimates of Peak Flow or impact on Sanitary Sewer System capacity (as appropriate) from defects in each line segment, based on a consistently applied set of stated criteria as set forth in the SSA Work Plan;

j. A summary of the technical approach utilized in carrying out the Capacity Assessment analyses;

k. A detailed description of any deviations from the CAP Work Plan,

including a discussion of the reasons for such deviation;

l. Identification of all portions of the Sanitary Sewer System with insufficient capacity to convey Peak Flows as identified by the Model. In the case of the Sanitary Sewer System, insufficient capacity is the inability of the sewer, Pumping Station or other structure to convey Peak Flows without experiencing surcharge sufficient to cause Recurring SSOs under either predicted Peak Flows or predicted average conditions or both. The SSA Report shall also identify any insufficient capacity in the WWTPs. In the case of a WWTP, insufficient capacity is the inability to provide full secondary treatment and disinfection, without an Unpermitted Bypass, to all flow reaching the plant, and to discharge those flows in full compliance with the applicable NPDES permit.

m. The SSA Report shall describe future projected flows.

n. The SSA Report shall provide information on the predicted (e.g. Manning equation) and actual Peak Flow capacity of all Major Gravity Lines (by segment), all Force Mains, syphons, Pumping Stations, and WWTPs;

o. Summaries, by sub-basin, of the number and footage of sewer segments surcharged, and the number of structures at overflow, under each condition investigated;

p. Mapping of each sub-basin, for each condition investigated, illustrating each pipe segment operating in surcharge, and each manhole or structure at which a Recurring SSO might be expected to occur;

q. The information regarding the Pumping Station Evaluation as required by Sub-Section C;

r. The results of the Capacity Assessment as required by Sub-Section D;

s. A summary of activities undertaken to configure and calibrate the Model as required by Sub-Section E; and

t. A summary of any capital projects implemented since commencement of the SSA, including those projects referenced in Paragraph 15.A that have reduced dry or wet weather flows in the Sanitary Sewer System.

(iv) LFUCG shall utilize the collected data from the SSA Report to develop the Sanitary Sewer System Remedial and WWTP Measures Plan required pursuant to Sub-Section G.

G. Sanitary Sewer System and WWTP Remedial Measures Plan

(i) Within six (6) months after submission of the SSA Report for each Sewershed Group, LFUCG shall, after appropriate opportunities for public participation, develop and submit for EPA/EPPC review, comment and approval in accordance with the requirements of Section X, a Sanitary Sewer System and WWTP Remedial Measures Plan with specific measures and schedules that, when implemented, will result in adequate capacity in the Sanitary Sewer System and LFUCG's WWTPs, such that Recurring SSOs, Unpermitted Bypasses and overloading at the WWTPs, and WWTP NPDES permit noncompliance will be eliminated.

(ii) The Sanitary Sewer System and WWTP Remedial Measures Plan shall identify all measures necessary to achieve adequate capacity. Adequate capacity is the capacity needed to collect, convey and treat anticipated Peak Flows, without Recurring SSOs or wet

weather Unpermitted Bypasses at the WWTPs. At a minimum, Peak Flows shall include the conditions considered as part of the SSA (see Sub-Sections B and D above). If insufficient capacity to accommodate projected Peak Flows exists in any portion of the system, including at the LFUCG WWTPs, LFUCG shall identify and propose measures to provide adequate capacity.

(iii) The Sanitary Sewer System and WWTP Remedial Measures Plan shall identify all WWTP upgrades and repair measures necessary to achieve WWTP compliance with all NPDES permit limitations for LFUCG's WWTPs and requirements and to eliminate wet weather Unpermitted Bypasses.

(iv) The Sanitary Sewer System and WWTP Remedial Measures Plan shall identify the degree to which sources of Excessive I/I shall be removed, and the degree to which Excessive I/I removal is expected to alleviate capacity constraints, and propose specific remedial measures that will address those capacity limitations not expected to be addressed by Excessive I/I removal. Anticipated I/I removal rates used in the development of the Sanitary Sewer System and WWTP Remedial Measures Plan shall reflect current industry practice and local experience. Specific remedial measures to address capacity limitations may also include increases in Pumping Station and Sanitary Sewer System capacity, construction of storage or equalization basin facilities, or increases in WWTP capacity.

(v) The Sanitary Sewer System and WWTP Remedial Measures Plan shall identify all measures necessary to eliminate all cross-connections, and Recurring SSOs caused by physical degradation of sewers, inadequate Pumping Station capacities, or inadequate Pumping Station reliability.

(vi) The Sanitary Sewer System and WWTP Remedial Measures Plan shall,

for purposes of developing schedules under Sub-Section G prioritize the Sanitary Sewer System remedial measures based upon: (a) relative likely human health and environmental impact risks; (b) Recurring SSO frequencies of activation; and (c) total annual Recurring SSO volumes. LFUCG may also take into account cost-effectiveness and risks associated with implementation. The Sanitary Sewer System and WWTP Remedial Measures Plan shall provide a description of the methodology used to apply the above factors.

(vii) The Sanitary Sewer System and WWTP Remedial Measures Plan shall provide estimated capital, O&M, and present value costs for each identified remedial measure. Such costs shall be provided in consistent, year-specific dollars. The Sanitary Sewer System and WWTP Remedial Measures Plan shall provide an expeditious schedule for design, construction, and placement in service of all proposed measures that is in no event be later than eleven (11) years from the Effective Date of the Consent Decree, or in the event that remedial measures include a WWTP upgrade, thirteen (13) years from the Effective Date of Consent Decree only for such WWTP upgrade and other remedial measures associated with the WWTP upgrade. These deadlines may only be extended with approval of EPA and EPPC, for good cause, in accordance with Section XX (Modification). LFUCG shall identify the dates for preliminary design, complete design, complete permitting, award contract, begin construction, and complete construction dates for each measure proposed.

(viii) Upon approval by EPA/EPPC, LFUCG shall implement the remedial measures in the approved Sanitary Sewer System and WWTP Remedial Measures Plan in accordance with the schedule contained therein. Nothing herein shall preclude LFUCG from implementing interim remedial measures prior to approval of the Sanitary Sewer System and

WWTP Remedial Measures Plan.

16. CMOM (Capacity, Management, Operation and Maintenance) Programs Self-Assessment. LFUCG shall submit to EPA and EPPC within six (6) months of the Effective Date of this Consent Decree a CMOM Programs Self-Assessment of LFUCG's Sanitary Sewer System in accordance with U.S. EPA Region 4 methodology as set forth in the CD ROM disk attached hereto as Appendix I, to ensure that LFUCG has CMOM Programs in place that are effective at eliminating and preventing SSOs. This Self-Assessment shall include an evaluation of, and where appropriate, recommendation of improvements to, each CMOM Program to ensure that such Programs contain the following key CMOM elements: written, defined purpose(s); written, defined goal(s); written documentation with specific details; implementation by well trained personnel; established performance measures; and written procedures for periodic review. Recommended improvements shall include schedules for implementation. However, LFUCG shall develop and implement the CMOM programs no later than two (2) years after the date of EPA/EPPC approval of the CMOM Self-Assessment, unless otherwise specified in the CMOM Specific Program Development subparagraphs below. Particular emphasis shall be placed, and recommendations for necessary improvement shall be made, regarding the following programs, as described in the attached CD ROM: Pump Station Preventative Maintenance Program, Pump Station Performance and Adequacy Program, and Pump Station Rehabilitation Program. EPA and EPPC jointly will act on the Self-Assessment in accordance with Section X of this Consent Decree (Reporting Requirements and Approval of Submittals). LFUCG shall submit an annual report of the status of implementation of its CMOM Programs as provided in Paragraph 29.B below. If LFUCG acquires ownership of the wastewater collection and

transmission system serving the Blue Sky WWTP, LFUCG shall commence implementation of its CMOM programs for that system within six (6) months of acquiring ownership but in no event sooner than the scheduled implementation dates provided for under specific CMOM program approvals.

A. CMOM Specific Program Development - Sewer Overflow Response Plan.

(i) Sewer Overflow Response Plan - General

LFUCG shall submit to EPA and EPPC, within six (6) months of the Effective Date of this Consent Decree a Sewer Overflow Response Plan ("SORP") in compliance with 401 KAR 5:015 to establish timely and effective methods and means of: (a) responding to, cleaning up, and/or minimizing the impact of all SSOs; (b) reporting the location, estimated volume, duration, cause and impact of all SSOs to EPPC and EPA; and (c) notifying the potentially impacted public. EPA and EPPC jointly will act on the SORP in accordance with Section X of this Consent Decree (Reporting Requirements and Approval of Submittals). If approved, LFUCG shall commence implementation of the SORP pursuant to the schedule set forth in the submittal within thirty (30) days of receiving EPA/EPPC approval. By no later than October 1 of each year following the approval of the SORP, LFUCG shall review the SORP and propose changes as appropriate. Such changes are subject to EPA/EPPC review and approval. A copy of future updates to the SORP shall also be provided to the Frankfort Regional Office of EPPC's Division of Water within fifteen (15) days of incorporation of the update.

(ii) Sewer Overflow Response Plan - Building Backups

LFUCG shall include a section in its SORP that establishes a separate protocol for addressing Building Backups. The Building Backup section of the SORP shall include the

following elements:

(a) Maintenance of a log of Building Backups separately from other SSOs;

(b) A process a customer may follow to dispute a determination by LFUCG that a wastewater backup into a building is caused by a blockage or other malfunction of a Private Lateral, and therefore is not a Building Backup;

(c) Repair and mitigation procedures that include measures necessary to disinfect and/or remove items potentially contaminated by the Building Backup.

B. CMOM Specific Program Development - System Capacity Assurance Program.

(i) The Program. Within two (2) years of the Effective Date, LFUCG shall submit for review, comment and approval, a Capacity Assurance Program ("CAP") to EPA and EPPC. EPA and EPPC shall jointly act on the CAP in accordance with Section X of this Consent Decree. No later than thirty (30) days after approval, LFUCG shall commence implementation of the CAP, subject to the schedules set forth in the approved CAP. The CAP shall identify each Sewershed or part of a Sewershed with insufficient capacity under either One Hour Peak Flow, or average conditions, or both, consistent with the capacity provisions of this Section. The CAP shall also analyze all portions of the WCTS that hydraulically impact known SSOs and all portions of the WWTPs that may contribute to violations of the NPDES Permits. The CAP shall assess One Hour Peak Flow capacity of all major system components for existing and proposed flows. The CAP shall enable LFUCG to authorize new sewer service connections, or increases in flow from existing sewer service connections except as otherwise provided

herein, only after LFUCG certifies that the analysis procedures contained in the approved CAP have been used and that LFUCG has determined, based on those procedures, that there is Adequate Treatment Capacity, Adequate Transmission Capacity, and Adequate Collection Capacity as set forth in Paragraph 16.B.(ii)(a) through (c) below. At a minimum, the CAP shall contain all of the following components:

(a) The technical information, methodology and analytical techniques, including the model or software, to be used by LFUCG to calculate collection transmission and treatment capacity;

(b) The means by which LFUCG will integrate its certification of Adequate Treatment Capacity, Adequate Transmission Capacity, and Adequate Collection Capacity with LFUCG's approval of application for extension of sewer lines, and LFUCG's acquisition of new or existing sewers from other owners;

(c) The technical information, methodology and analytical techniques, including the model or software to be used by LFUCG to calculate the net (cumulative) increase or decrease in volume of wastewater introduced to the wastewater conveyance and transmission system as a result of LFUCG's authorization of new sewer service connections and increases in flow from existing

connections and the completion of: (1) specific projects that add or restore capacity to the WCTS or WWTPs ("Capacity Enhancing Projects"); (2) specific projects that reduce One Hour Peak Flow through removal of I/I ("I/I Projects"); and (3) permanent removal of sewer connections ("Removal of Connections");

(d) An informational management system (IMS) capable of tracking the accumulation of banked credits, earned pursuant to Paragraph 16.B.(iii) below, from completion of Capacity Enhancing Projects, I/I Projects, and Removal of Connections, the capacity-limited portion of the Sewershed in which those credits were earned, and the expenditure of such credits on future increases in flow from new and existing sewer service connections in that capacity limited portion of the Sewershed; and

(e) All evaluation protocols to be used to calculate collection, transmission, and treatment capacity including, but not limited to, standard design flow rate rules of thumb regarding pipe roughness, manhole head losses, as-built drawing accuracy (distance and slope), and water use (gallons per capita per day); projected flow impact calculation techniques; and metering of related existing

One Hour Peak Flows (flows metered in support of analysis and/or manual observation of existing One Hour Peak Flows). LFUCG may identify sewer line segments which have been specifically designed and constructed to operate under surcharge conditions (i.e., with welded or bolted joints or inverted siphons) and identify the level of surcharge for those segments.

(ii) Capacity Certifications. Except as provided in Paragraph 16.B.(iii) and (iv), below, after the implementation date, LFUCG may authorize a new sewer service connection or additional flow from an existing sewer service connection, only after it certifies that the analysis procedures contained in the approved CAP have been used and that LFUCG has determined, based on those procedures that there is Adequate Treatment Capacity, Adequate Transmission Capacity, and Adequate Collection Capacity as set forth in Paragraph 16.B.(ii)(a) through (c).

(a) Treatment Capacity Certifications. LFUCG's certification of "Adequate Treatment Capacity" shall confirm that, at the time the WWTP receives the flow from a proposed sewer service connection(s) or increased flow from an existing sewer service connection(s), when combined with the flow predicted to occur from all other authorized sewer service

connections (including those which have not begun to discharge into the Sanitary Sewer System), the WWTP will not be in "noncompliance" for quarterly reporting as defined in 40 C.F.R. Part 123.45, Appendix A. LFUCG's certification of Adequate Treatment Capacity shall confirm that the new or increased flow to the WWTP will not result in Unpermitted Bypasses or diversions prohibited by the KPDES Permits due to lack of treatment capacity.

(b) Transmission Capacity Certifications. LFUCG's certification of "Adequate Transmission Capacity" shall confirm that each Pumping Station through which the proposed additional flow from new or existing sewer service connections would pass to the WWTP receiving such flow, has the capacity to transmit the existing One-Hour Peak Flow passing through the Pumping Station, plus the addition to the existing One-Hour Peak Flow predicted to occur from the proposed connection, plus the addition to the existing One-Hour Peak Flow predicted to occur from all other authorized sewer service connections which have not begun to discharge into the Sanitary Sewer System.

(c) Collection Capacity Certifications. LFUCG's certification of "Adequate Collection Capacity" shall confirm that each

gravity sewer line, through which the proposed additional flow from new or existing connections would pass, has the capacity to carry the existing One-Hour Peak Flow passing through the gravity sewer line plus the addition to the existing One-Hour Peak Flow from the proposed connection, plus the addition to the existing One-Hour Peak Flow predicted to occur from all other authorized sewer service connections which have not begun to discharge into the Sanitary Sewer System without causing a Surcharge Condition.

(d) Definition of "Surcharge Condition." For purposes of this Paragraph 16.B. only, the term "Surcharge Condition" shall mean the condition that exists when the supply of wastewater resulting from the One-Hour Peak Flow is greater than the capacity of the pipes to carry it and the surface of the wastewater in manholes rises to an elevation greater than twenty-four (24) inches above the top of the pipe or within three (3) feet of the rim of the manhole, and the sewer is under pressure or head, rather than at atmospheric pressure, unless LFUCG has, pursuant to Paragraph 16.B.(i)(e), above, identified that pipe segment and manhole is designed to operate in that condition, in

which case the identified level of surcharge will be used. Notwithstanding the foregoing, no criteria contained in the Capacity Assurance Plan shall be construed as setting standards for the ultimate design or rehabilitation of LFUCG's WCTS.

(e) Minor Sewer Connections. For minor sewer service connections, LFUCG may elect to perform a Quarterly capacity analysis for each Sewershed or part of a Sewershed by certifying that the Sewershed has adequate capacity, as defined in Paragraph 16B.(ii)(a) through (c) above, to carry existing One Hour Peak Flows and the additional flows generated by all such minor sewer service connections projected to be approved in the subsequent quarter. For any Sewershed or part of a Sewershed that can be so certified LFUCG may approve these projected minor sewer service connections without performing individual certifications for each connection. "Minor Sewer Connection" shall mean connections which do not exceed 2,500 gpd.

(iii) Capacity for Treatment, Transmission, and Collection in Lieu of Certification. LFUCG may authorize a new sewer service connection, or additional flow from an existing sewer service

connection, even if it cannot satisfy the requirements of Paragraph 16.B.(ii) above, provided LFUCG certifies that all of the following provisions, where applicable, are satisfied.

(a) LFUCG is in substantial compliance with this Consent Decree;

(b) LFUCG has identified the sewer line segment(s), Pumping Station(s), and/or wastewater treatment systems that do not meet the conditions for certification of Adequate Treatment capacity, Adequate Collection Capacity, and/or Adequate Transmission Capacity;

(c) LFUCG has identified the sewer line segment(s) from which there has been a Recurring SSO;

(d) LFUCG shall complete, prior to the time the proposed additional flow from new or existing sewer service connections is introduced into the Sanitary Sewer System, specific Capacity Enhancing Projects, I/I Projects and/or Removal of Connections which will add sewer capacity or reduce One Hour Peak Flows to the identified sewer line segment(s), Pumping Station(s), wastewater treatment system(s), and/or Recurring SSO in accordance with the factors set forth in subparagraphs (e) and (f) below;

(e) Where LFUCG has undertaken specific Capacity Enhancing Projects that provide for additional off-line storage and/or specific Removal of Connections to satisfy the requirements of subparagraph (d) above, the estimated added capacity resulting from such projects must exceed the estimated amount of any proposed additional flow by the following factor: 1.5:1 in West Hickman and 1:1 for all other Sewersheds.

(f) Where LFUCG has undertaken specific I/I Projects or Capacity Enhancing Projects, other than those that provide for additional off-line storage and/or specific removal of connections, to satisfy the requirements of subparagraph (d) above, the estimated reduction in One Hour Peak Flows or added capacity resulting from such projects must exceed the estimated amount of any proposed additional flow by the following factors: (a) a factor of 4:1 for I/I Projects and other Capacity Enhancing Projects in West Hickman Sewershed related to a Recurring SSO; (b) a factor of 3:1 for I/I Projects and other Capacity Enhancing Projects related to a Recurring SSO in other Sewersheds; and (c) a factor of 2:1 for I/I Projects and other Capacity Enhancing Projects not related to a Recurring SSO;

(g) Commencing during the first year of the CAP following EPA/EPPC approval, and annually thereafter, LFUCG shall perform a review of specific Capacity Enhancing Projects and I/I Projects undertaken to determine if actual added capacity and One Hour Peak Flow reductions are in line with what LFUCG originally estimated for such projects; and LFUCG has used the results of this review to adjust future estimates as necessary;

(h) Any new sewer service connection or increase in flow to an existing connection authorized prior to the completion of a necessary added capacity or One Hour Peak Flow reduction project as set forth above shall be conditioned upon completion of such project prior to the time that the new sewer service connection or flow increase is introduced into the Sanitary Sewer System; and

(i) In implementing the provisions of this Paragraph 16.B.(iii), LFUCG may use a "banking credit system" for the sewer line segment(s), Pumping Station(s), wastewater treatment systems, and/or Recurring SSO for which LFUCG is not able to satisfy the conditions set forth in Paragraph 16.B.(ii) above. The addition of sewer capacity and/or reduction in One Hour Peak Flows from Capacity

Enhancement Projects, I/I Projects, and Removal of Connections, completed after the Effective Date of this Consent Decree, to the affected sewer line segment, Pumping Station, wastewater treatment system or Recurring SSO may be accumulated in the form of credits in accordance with the factors set forth in subparagraphs (e) and (f) above, which may then be used for authorization of future sewer service connections or increases in flow from existing connections to the affected sewer line segment, Pumping Station, wastewater treatment system or Recurring SSO in the capacity-limited portion of the Sewershed.

(iv) Essential Services. Notwithstanding the provisions of Paragraph 16.B.(ii) above, LFUCG may authorize a new sewer service connection, or additional flow from an existing sewer service connection, even if it cannot certify that it has Adequate Transmission Capacity, Adequate Collection Capacity, and/or Adequate Treatment Capacity as set forth in Paragraph 16.B(ii)(a)-(c) above for health care facilities, public safety facilities, public schools, or other facilities as agreed upon in writing by EPA and EPPC; and in those cases where a pollution or sanitary nuisance condition exists, as determined by Fayette County Health

Department or its regulatory successor as the result of a discharge of untreated wastewater from an on-site septic tank or other discharge point. For all such new service connections, or additions to flow from an existing connection, LFUCG shall make the appropriate subtraction to the balance in the credit bank described in Paragraph 16.B(iii) above and modify the list described in Paragraph 16.B(viii).

(v) Existing Illicit Connections. Notwithstanding the provisions of Paragraph 16.B.(ii) and (iii) above, LFUCG may authorize a new sewer service connection, or additional flow from an existing sewer service connection, even if it cannot certify that it has Adequate Transmission Capacity and/or Adequate Collection Capacity and/or Adequate Treatment Capacity as set forth in Paragraph 16.B.(ii) above for any illicit connections or discharges of wastewater to the storm water system or to waters of the United States. For all such new service connections or additions to flow from an existing connection, created before the entry of the Consent Decree that result from the elimination of the illicit connections or discharges, LFUCG shall not be required to make a subtraction from the balance in the credit bank described in Paragraph 16.B.(iii) above or to modify the list described in Paragraph 16.B.(viii) below. For all such new service connections

or additions to flow from an existing connection created after the entry of the Consent Decree that result from the elimination of illicit connections or discharges, excluding those connections considered minor connections, LFUCG shall make a subtraction from the balance in the credit bank described in Paragraph 16.B.(iii) above and modify the list described in Paragraph 16.B.(viii) below.

(vi) Reconnections Following Termination as a Result of LFUCG's Private Lateral Program. Notwithstanding the provisions of Paragraph 16.B.(ii) and (iii) above, in the event of a temporary suspension or interruption of a customer's service as a result of LFUCG's private lateral program, any service that is resumed from a newly replaced or repaired Private Lateral shall not be deemed to be a new service connection or an addition to flow from an existing connection.

(vii) Certifications. All certifications pursuant to this Paragraph 16.B. shall be made by a professional engineer registered in the Commonwealth of Kentucky and shall be approved by a responsible party of LFUCG as defined by 401 KAR 5:060 Section 9(4) and 40 C.F.R. 122.22(b). LFUCG shall maintain all such certifications, and all data on which the certifications are based, in its offices for inspection by EPA and EPPC. EPA and EPPC may

request, and LFUCG shall provide, any and all documentation necessary to support any certification made by LFUCG pursuant to this Paragraph 16.B. and make available to the extent possible, individuals providing such certifications to meet with EPA and EPPC.

(viii) List of Future Authorized Connections. Within one hundred twenty (120) days of the Effective Date, LFUCG shall establish a list of all authorized new sewer service connections or increases in flow from existing connections which flows have not yet been introduced into the Sanitary Sewer System. The following information shall be recorded for each authorized connection: street address, estimated average daily flow, estimated maximum daily flow, Sewershed, WWTP, date authorized, and estimated Calendar Quarter when the additional flow from the connection will begin. LFUCG shall update and maintain this list as necessary until full implementation of the CAP, as approved by EPA and EPPC.

(ix) Notwithstanding the foregoing, no criteria contained in the Capacity Assurance Plan shall be construed as setting standards for the ultimate design or rehabilitation of LFUCG's WCTS.

(x) Nothing contained in Section VII shall alter the EPPC regulations pertaining to sewer line extensions and LFUCG shall at all times

comply with the regulations and any requirements of EPPC. Plans for sanitary sewer line extensions shall be submitted to EPPC and reviewed by EPPC in accordance with 401 KAR 5:005. With each request submitted for a sanitary line extension after implementation of the CAP, LFUCG shall submit to EPPC the analyses performed pursuant to Paragraph 16.B of the Consent Decree demonstrating that capacity exists for the proposed extension.

C. CMOM Specific Program Development - Fats, Oils, and Grease Control Program ("FOG Program"). LFUCG shall submit to EPA and EPPC within twelve (12) months of the Effective Date of this Consent Decree the FOG Program, including a schedule for implementation which shall provide for implementation within eighteen (18) months of EPA/EPPC approval. EPA and EPPC jointly will act on the FOG Program in accordance with Section X of this Consent Decree (Reporting Requirements and Approval of Submittals). The Program shall include:

(i) legal authority to control the discharge of grease into the Sanitary Sewer System, including the ability to implement a permit program;

(ii) specification of accepted devices to control the discharge of grease into the Sanitary Sewer System;

(iii) establishment of standards for the design and construction of grease control devices including standards for capacity and accessibility, site map, design documents and as-built drawings;

(iv) establishment of grease control device management, operation and maintenance standards, or best management practices, that address onsite record keeping requirements, cleaning frequency, cleaning standards, use of additives, and ultimate disposal;

(v) establishment of construction inspection protocols, including scheduling, inspection report forms, and inspection record keeping requirements, to assure that grease control devices are constructed in accordance with established design and construction standards;

(vi) establishment of compliance inspection protocols, including scheduling, inspection report forms, and inspection record keeping requirements to assure that grease control devices are being managed, operated and maintained in accordance with the established management, operation and maintenance standards or best management practices;

(vii) establishment of an enforcement program to ensure compliance with the grease control program;

(viii) establishment of a compliance assistance program to facilitate training of grease generators and their employees;

(ix) establishment of a public education program directed at reducing the amount of grease entering the Sanitary Sewer System from private residences;

(x) establishment of staffing and equipment requirements to ensure effective implementation of the program; and,

(xi) establishment of performance indicators to be used by LFUCG to measure the effectiveness of the FOG Program.

D. <u>CMOM Specific Program Development - Gravity Line Preventative</u>

Maintenance Program. LFUCG shall submit to EPA and EPPC within twelve (12) months of the Effective Date of this Consent Decree a Gravity Line Preventative Maintenance Program, including a schedule of implementation which shall provide for implementation within eighteen (18) months of EPA/EPPC approval. EPA and EPPC jointly will act on the Gravity Line Preventative Maintenance Program in accordance with Section X of this Consent Decree (Reporting Requirements and Approval of Submittals). This Program shall include:

(i) Routine Hydraulic Cleaning Program. LFUCG shall have in place protocols for implementing routine hydraulic cleaning component of the preventative maintenance program for gravity lines. The program will include provisions for needs determination, establishing priorities and scheduling, number of crews and personnel (including, where appropriate, contract crews), hydraulic cleaning equipment to be used, standard hydraulic cleaning maintenance procedures, standard forms, records and performance measures and an information management system.

(ii) Routine Mechanical Cleaning Program. LFUCG shall have in place protocols for implementing routine mechanical cleaning component of the preventative maintenance program for gravity lines. The program will include provisions for needs determination, establishing priorities and scheduling, number of crews and personnel (including, where appropriate, contract crews), mechanical cleaning equipment to be used, standard mechanical cleaning maintenance procedures, standard forms, records and performance measures and an information management system.

(iii) Root Control Program. LFUCG shall have in place protocols, methods, and approaches for implementing a root control component of the preventative

maintenance program for gravity lines. The program will include provisions for needs determination, establishing priorities and scheduling, number of crews and personnel (including, where appropriate, contract crews), root control methods and approaches, root control maintenance procedures, standard forms, records and performance measures and an information management system.

E. CMOM Specific Program Development - Pump Station Operation Plan for Power Outages

LFUCG shall submit to EPA and EPPC for review, comment, and approval within nine (9) months of the Effective Date of this Consent Decree a Pump Station Operation Plan for Power Outages. This operation plan shall include an evaluation of the adequacy of its current Pumping Station backup power and emergency procedures for power outages. These procedures may be achieved via emergency generators, emergency pumping capabilities, separate power feeds from separate substations, or other approved procedures. Emergency generators may be either permanently installed or portable. Emergency pumping typically consists of portable, engine-driven pumps that can be quickly connected to a Pumping Station.

(i) The evaluation of emergency procedures for power outages shall consider the following criteria:

(a) An adequate alternative power source must have sufficient capability to operate the station at its rated capacity, as well as operate all ancillary equipment and instrumentation;

(b) Emergency pumping capability means modification of a Pumping Station to allow rapid connection of a portable pump to

the Pumping Station and provision of a pump with the capability to handle that station's Peak Flows. This includes providing "quick-connect" couplers for a pump discharge.

(c) The ability of maintenance personnel to take corrective action within the critical response time calculated for each Pumping Station.

(d) In evaluating the adequacy of its current situation, LFUCG shall consider its history of equipment failure-related, power-loss-related and lightning strike-related SSOs during the past five (5) years preceding the lodging date of the Consent Decree.

(ii) LFUCG shall include in the Pump Station Operation Plan for Power Outages, detailed information regarding the criteria specified above for each of its Pumping Stations. In particular, the Pump Station Operation Plan for Power Outages shall:

(a) Describe each station;

(b) Provide detailed information regarding the results of the evaluation of each Pumping Station;

(c) Provide detailed information about its backup power, emergency pumping capability, and emergency procedures at each of its Pumping Stations;

(d) Provide information regarding lightning strike protection equipment at each Pumping Station;

(e) Provide detailed descriptions of its history of power-loss-related and

lightning strike-related SSOs during the past five (5) years preceding the lodging date of the Consent Decree;

(f) Identify all measures necessary to correct all identified deficiencies, including all appropriate emergency procedures and lightning strike-protection measures necessary to minimize power-loss related SSOs; and

(g) Expeditious schedules for the implementation of all identified measures; provided, however, that such schedules shall not extend beyond three (3) years of the approval date by EPA and EPPC of the Pump Station Operation Plans for Power Outages.

EPA and EPPC jointly will act on the Pump Station Operation Plan for Power Outages in accordance with Section X of this Consent Decree (Reporting and Approval of Submittals).

17. Backup Power for WWTPs. By April 1, 2008, LFUCG shall ensure that backup power is provided for secondary treatment at each of its WWTPs, in addition to the backup power that is currently provided for primary treatment. Back-up power may be provided through a dual power feed system consistent with the Ten State Standards.

VIII. SUPPLEMENTAL ENVIRONMENTAL PROJECTS

18. LFUCG shall implement two Supplemental Environmental Projects (SEPs) as described in, and in accordance with all provisions of, Appendix J-1 (Coldstream Park Stream Corridor Restoration and Preservation SEP), and Appendix J-2 (Green Infrastructure SEP) of this Consent Decree.

19. LFUCG is responsible for the Satisfactory Completion of the SEPs in accordance with the requirements of this Decree.

20. With regard to the SEPs, LFUCG certifies the truth and accuracy of each of the following:

A. That all cost information provided to EPA in connection with EPA's approval of the SEPs is complete and accurate and represents a fair estimate of the cost necessary to implement the SEPs and that LFUCG in good faith estimates that the cost to implement the Coldstream Park Stream Corridor Restoration and Preservation SEP, exclusive of administrative fees and legal fees, is $1,000,000, and that the cost to implement the Green Infrastructure SEP, exclusive of administrative fees and legal fees, is $230,000;

B. That, as of the date of executing this Decree, LFUCG is not required to perform or develop the SEPs by any federal, state, or local law or regulation, nor is LFUCG required to perform or develop any of the SEPs by agreement or grant or as injunctive relief awarded in any other action in any forum;

C. That the SEPs are not projects that LFUCG planned or intended to fund, construct, perform, or implement other than in settlement of the claims resolved in this Decree;

D. That LFUCG has not received, and is not negotiating to receive, credit for the SEPs in any other enforcement action; and

E. That LFUCG will not receive any reimbursement for any portion of the SEPs from any other person.

21. <u>SEP Completion Reports</u>

A. Within ninety (90) days after the completion of each SEP, LFUCG shall submit a SEP Completion Report to the United States in accordance with Section XVII of this Consent Decree (Notices). The SEP Completion Reports shall contain the following

information:

(i) A detailed description of the SEP as implemented;

(ii) A description of any problems encountered in completing the SEP and the solutions thereto;

(iii) An itemized list of all Eligible SEP Costs;

(iv) Certification that the SEP has been fully implemented pursuant to the provisions of this Decree; and

(v) A description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible).

B. Progress reports on the SEPs are required pursuant to Paragraph 29.

22. EPA may, in its discretion, require information in addition to that described in the preceding Paragraph in order to evaluate LFUCG's completion report.

23. After receiving each SEP Completion Report, the United States shall notify LFUCG whether or not LFUCG has Satisfactorily Completed the SEP. If the SEP has not been Satisfactorily Completed, Stipulated Penalties may be assessed under Section XI of this Consent Decree (Stipulated Penalties).

24. Disputes concerning the satisfactory performance and/or Satisfactory Completion of SEPs (including disputes about whether stipulated penalties are due) and the amount of Eligible SEP Costs may be resolved under Section XIII of this Decree (Dispute Resolution). No other disputes arising under this Section shall be subject to Dispute Resolution.

25. Each submission required under this Section shall be signed by an LFUCG

official with knowledge of the SEP and shall bear the certification language set forth in Paragraph 31 below.

26. Any written public statement made by LFUCG that publicizes any SEP under this Decree shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action under the Clean Water Act, United States et al. v. Lexington-Fayette Urban County Government, brought on behalf of the U.S. Environmental Protection Agency." Any oral statement made by LFUCG publicizing any SEP under this Decree in a public gathering shall acknowledge that the project was undertaken in connection with the settlement of this CWA case. "Publicize" means the dissemination of information intended to attract public notice, interest, or notoriety.

IX. COMMONWEALTH ENVIRONMENTAL PROJECTS

27. In further consideration of the settlement with the Commonwealth of the action resolved by this Consent Decree, LFUCG shall timely perform Commonwealth environmental projects ("Commonwealth Environmental Projects") as set forth in Appendix K. The total expenditure for the Commonwealth Environmental Projects shall not be less than $1,300,000 for the Blue Sky Package Treatment Plant Elimination project (Appendix K-1) and $200,000 for the Flooding Evaluation project (Appendix K-2). If LFUCG fails to perform these Commonwealth Environmental Projects by the dates specified in Appendix K, LFUCG shall pay to the Commonwealth as a stipulated penalty the difference between its documented Commonwealth Environmental Project expenditures and $1,500,000. Such payment shall be due and payable on the latest date for completion of the Commonwealth Environmental Projects identified in Appendix K. Alternatively, LFUCG may propose, and the EPPC shall consider, additional

Commonwealth Environmental Projects for which the total expenditure shall not be less than the difference between its documented Commonwealth Environmental Project expenditures and $1,500,000.

28. LFUCG shall submit to EPPC a Commonwealth Environmental Project Completion Report for each Commonwealth Environmental Project described in Appendix K no later than sixty (60) days from the date for completion of the Commonwealth Environmental Projects set forth in Appendix K. The Report shall contain the following information for each Commonwealth Environmental Project: (a) a detailed description of the Commonwealth Environmental Project as implemented; (b) a description of any operating problems encountered and the solutions thereto; (c) itemized costs; (d) certification that the Commonwealth Environmental Project has been fully implemented pursuant to Appendix K and the provisions of this Consent Decree; and (e) a description of the environmental and public health benefits resulting from implementation of the Commonwealth Environmental Project.

X. REPORTING REQUIREMENTS AND APPROVAL OF SUBMITTALS

29. Reports. LFUCG shall submit the following notices and reports:

A. Quarterly Reports. After the Effective Date of this Consent Decree and until termination of this Decree pursuant to Section XXI (Termination), LFUCG shall submit to EPA and EPPC quarterly reports by email and by either U.S. Mail or an overnight delivery service. The first such quarterly report shall be submitted to EPA and EPPC no later than thirty (30) days after the second full calendar quarter after the Effective Date of this Consent Decree. Succeeding quarterly reports shall be submitted no later than thirty (30) days after the completion of each succeeding calendar quarter. The quarterly report shall include, at a

minimum:

(i) A description of all projects and activities conducted during the most recently completed calendar quarter to comply with the requirements of this Consent Decree, in Gantt chart or similar format;

(ii) The date, locations, estimated volume, and cause (if known) of all SSOs for the most recently completed quarter; a cumulative accounting of the estimated reduction in volume and in number of occurrences of SSOs and Unpermitted Bypasses;

(iii) The anticipated projects and activities that will be performed in the next quarter to comply with the requirements of this Consent Decree, in Gantt chart or similar format; and

(iv) If LFUCG violates any requirement of this Consent Decree or has reason to believe that it is likely to violate any requirement of this Consent Decree in the future, LFUCG shall notify the United States and EPPC of such violation and its likely duration, with an explanation of the violation's likely cause and of the remedial steps taken, and/or to be taken, to prevent or minimize such violation. If the cause of a violation cannot be fully explained at the time the report is due, LFUCG shall include a statement to that effect in the report. LFUCG shall investigate to determine the cause of the violation and then shall submit an amendment to the report, including a full explanation of the cause of the violation, within thirty (30) days after the quarterly report.

(v) Any additional information that demonstrates that LFUCG is implementing the remedial measures required in this Consent Decree.

B. Annual Reports. LFUCG shall submit to EPA and EPPC an annual report

for the previous calendar year, with the first annual report due January 31, 2009, and each year thereafter by January 31. Each annual report shall contain a summary of the CMOM Programs implemented pursuant to this Consent Decree, including a comparison of actual performance with any performance measures that have been established. The annual report shall contain a summary of each remedial measure and capital project implemented pursuant to this Consent Decree, including a description of LFUCG's compliance with the requirements of Section VI (Compliance Measures Relating to Storm Sewer System) of this Consent Decree. LFUCG shall also send to EPA and EPPC its MS4 Annual Report on the date specified in the effective NPDES MS4 Permit.

30. All reports required to be submitted pursuant to this Consent Decree shall be submitted to the recipients specified in accordance with Section XVII of this Consent Decree (Notices).

31. Each written report submitted by LFUCG under this Section shall be signed by a Division Director, or higher-level LFUCG official, and include the following certification:

> I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the

possibility of fine and imprisonment for knowing violations.

This certification requirement does not apply to emergency or similar notifications where compliance would be impractical.

32. Nothing in this Section X relieves LFUCG of the obligation to provide the requisite notice for purposes of Section XII (Force Majeure) of this Consent Decree.

33. The reporting requirements of this Consent Decree do not relieve LFUCG of any reporting obligations required by the Clean Water Act or its implementing regulations or by any other federal, state, or local law, regulation, permit, or other requirement.

34. Approval of Deliverables. After review of any modification of the SWQMP, CMOM Programs Self-Assessment, plan, workplan, statement of work, report, or other item that is required to be submitted pursuant to this Consent Decree for EPA/EPPC approval, EPA and EPPC may jointly, in writing: (a) approve the submission; (b) approve the submission upon specified conditions; (c) approve part of the submission and disapprove the remainder; or (d) disapprove the submission. If EPA/EPPC fails to approve, or otherwise act on a submittal within sixty (60) days of receipt of the submittal, then any subsequent milestone or completion date that is dependent upon such action by EPA/EPPC shall be extended by the equivalent number of days beyond the sixty (60) day review period for the submittal that is used by EPA/EPPC for the approval or other action.

35. If the submission is approved pursuant to Paragraph 34, subpart (a), LFUCG shall take all actions required by the plan, report, or other document, in accordance with the schedules and requirements of the plan, report, or other document, as approved. If the submission is conditionally approved or approved only in part, pursuant to Paragraph 34, subparts (b) or (c),

LFUCG shall, upon written direction of EPA/EPPC take all actions required by the approved plan, report, or other item that EPA/EPPC determines are technically severable from any disapproved portions, subject to LFUCG's right to dispute under Section XIII of this Decree (Dispute Resolution), the specified conditions.

36. If the submission is disapproved in whole or in part pursuant to Paragraph 34, subparts (c) or (d), then, subject to LFUCG's right to dispute the disapproval under Section XIII of this Consent Decree (Dispute Resolution), LFUCG shall, within sixty (60) days or such other time as specified by EPA/EPPC in such notice or agreed to by EPA/EPPC in writing, correct all deficiencies and resubmit the plan, report, or other item, or disapproved portion thereof, for approval, in accordance with the preceding Paragraphs.

37. Any Stipulated Penalties applicable to the original submission, as provided in Section X of this Decree (Reporting Requirements and Approval of Submittals), shall accrue during the 60-day period or other specified period, but shall not be payable unless the resubmission is untimely or is disapproved for material deficiencies; provided that, if the original submission was so deficient as to constitute a material breach of LFUCG's obligations under this Decree, the Stipulated Penalties applicable to the original submission shall be due and payable notwithstanding any subsequent resubmission.

38. If a resubmitted plan, report, or other item, or portion thereof, is disapproved in whole or in part, EPA/EPPC may again require LFUCG to correct any deficiencies, in accordance with the preceding Paragraphs, or may itself correct any deficiencies, subject only to LFUCG's right to invoke Dispute Resolution. EPA and EPPC may also deem LFUCG to be out of compliance with this Consent Decree for failure to timely submit the submittal in compliance

with the requirements of this Consent Decree, and one or both may assess stipulated penalties pursuant to this Consent Decree, subject only to the rights of LFUCG under the dispute resolution provisions of this Consent Decree.

39. Obligation to Implement Re-Submittal. In the event that EPA/EPPC approves, approves upon conditions, or modifies any submittal pursuant to this Section, LFUCG shall proceed to take any action required to implement the submittal as approved or modified by EPA/EPPC, subject only to the rights of LFUCG under the dispute resolution provisions of this Consent Decree.

40. Submittals are Enforceable. All submittals required to be approved, including all schedules set forth therein, shall be enforceable under this Consent Decree as if they were set forth herein upon approval, approval upon conditions, or modification by EPA/EPPC, and after conclusion of any Dispute Resolution period. Any portion of a submittal that is not specifically disputed by LFUCG shall be enforceable during any Dispute Resolution period, provided that implementation of the non-disputed portions of the submittal is not dependent upon implementation of the disputed portion.

41. Revisions to Submittals. The Parties recognize the LFUCG may need or want to revise certain submittals during the term of this Consent Decree. Such revisions shall not be considered modifications to the Consent Decree for purposes of Section XX of this Consent Decree (Modification). LFUCG must obtain EPA and EPPC's prior written approval of any revision to the substance of any submittal initially required to be approved. LFUCG may revise the form of any submittal without consulting EPA/EPPC, but shall provide a copy of any revised submittal to EPA and EPPC within seven (7) days after making such revision.

XI. STIPULATED PENALTIES

42. If LFUCG fails to pay the civil penalties required to be paid under Section V (Civil Penalty), Paragraph 9, of this Decree when due, LFUCG shall pay a stipulated penalty of $1,000 per day for each day that the payment is late, to the United States. Late payment of the civil penalty shall be made in accordance with Section V, above (Civil Penalty). Stipulated Penalties shall be paid in accordance with Paragraph 50, below. All transmittal correspondence shall state that any such payment is for late payment of the civil penalty due under this Decree, or for Stipulated Penalties for late payment, as applicable, and shall include the identifying information set forth in Paragraph 10, above.

43. LFUCG shall be liable for Stipulated Penalties to the United States and EPPC for violations of obligations of this Consent Decree unless excused under Section XII (Force Majeure). A violation includes failing to perform any obligation required by the terms of this Decree, including any statement of work or schedule approved under this Decree, according to all applicable requirements of this Decree and within tbe specified time schedules established by or approved under this Decree.

44. Compliance Measures. The following Stipulated Penalties shall accrue for each violation identified below:

A. For each failure to adopt, amend, or maintain in force the ordinances required by Paragraph 12 of this Consent Decree after the dates specified therein, LFUCG may be assessed stipulated penalties as follows:

Penalty Per Violation Per Day	Period of Noncompliance
$500 per day	1st through 30th day

$1,000 per day	31st day and beyond

Stipulated penalties shall not be assessed where the failure is caused by an order from a court that stays, vacates or otherwise invalidates such an ordinance.

B. For each failure to meet a Performance Standard listed on Appendix E to this Consent Decree, LFUCG may be assessed stipulated penalties as follows:

(i) For each Performance Standard that requires activities to be implemented or completed by a specific date, $5,000 for failure to meet the deadline, and $2,000 for each 30-day period thereafter that the activities remain not implemented or completed.

(ii) For each Performance Standard that requires a certain number of inspections or activities to be completed each calendar month, $2,000 for each month in which LFUCG fails to comply. For any such Performance Standard that is not complied with more than three (3) times, the stipulated penalty shall be $6,000 for each additional month that LFUCG fails to comply.

(iii) For each Performance Standard that requires a certain number or amount of activities to be implemented or completed on an annual or bi-annual basis, $10,000 for failure to complete the activities within the relevant period, and $5,000 for each 30-day period thereafter that the activities remain not completed.

C. For each violation of any other requirement of Section VI of this Consent Decree (Compliance Requirements Relating to Storm Sewer System), stipulated penalties of $500 per day per violation may be assessed against LFUCG.

D. For failure to timely submit any of the submittals required in Section VII of this Consent Decree (Compliance Requirements Relating to Sanitary Sewer System),

stipulated penalties in the amount of $3,000 may be assessed against LFUCG. For each day LFUCG remains out of compliance for failure to timely submit any of the above submittals, a stipulated penalty may be assessed as follows:

Period Beyond Submittal Date	Penalty Per Violation Per Day
1-30 days	$500
more than 30 days	$1,000

E. For each day LFUCG fails to timely complete projects required in Section VII of this Consent Decree (Compliance Requirements Relating to Sanitary Sewer System) in accordance with the schedule set forth in this Consent Decree or in an approved compliance program, LFUCG may be assessed stipulated penalties for each such project as follows:

Period Beyond Completion Date	Penalty Per Violation Per Day
1 - 30 days	$1,000
31 - 60 days	$1,500
61 - 120 days	$2,000
more than 120 days	$3,000

In addition, for the circumstances described below, LFUCG may be assessed stipulated penalties as specified below:

(i) For any Recurring SSO that occurs at a location identified on Appendix A or for which a project has been identified to eliminate the Recurring SSO under a Capital Improvement Project or the Sanitary Sewer System and WWTP Remedial Measures Plan after the SSO elimination deadline specified for that location, $1,000

per SSO of less than 5,000 gallons, $2,000 per SSO of 5,000 gallons to 100,000 gallons, $5,000 per SSO of more than 100,000 gallons.

(ii) For any SSO that occurs other than those identified in subparagraph 44.E(i), $2,000 per SSO occurring more than two (2) years after the approval of the CMOM Self-Assessment.

(iii) For wet weather Unpermitted Bypasses at the WWTPs, $3,000 per bypass occurring after the deadline established for eliminating such bypasses under the Sanitary Sewer System and WWTP Remedial Measures Plan.

(iv) For the addition of a sanitary hook-up to the Sanitary Sewer System when there is a condition of inadequate collection, transmission, or treatment capacity exists, in violation of Paragraph 16.B(ii), $1,000 per hook-up, unless LFUCG has relied upon a certification made in good faith under Paragraph 16.B(ii) and has, upon notice of the existence of inadequate capacity as defined in Paragraph 16.B(ii), promptly taken steps to rectify the inadequacy.

(v) For any other violation of Section VII of this Decree, $500 per day per violation.

45. Submission, Reporting and Notice Requirements. The following Stipulated Penalties shall accrue per violation per day for failure to timely submit a complete report

(including quarterly and annual reports) or notice, as required in Section X (Reporting Requirements and Approval of Submittals) of this Consent Decree:

Penalty Per Violation Per Day	Period of Noncompliance
$1,000	1st through 14th day
$2,000	15th through 30th day
$3,000	31st day and beyond

46. SEP Compliance

Penalties under 46.A and 46.B are in the alternative, and shall not be used to apply to the same SEP.

A. If LFUCG has completed a SEP, but the SEP has not been Satisfactorily Completed, LFUCG may be assessed:

For the Coldstream SEP:	$1,050,000
For the Green Infrastructure SEP:	$245,000

less any amounts of Eligible SEP Costs that EPA determines were expended in a manner consistent with the Consent Decree. Stipulated penalties under this Subparagraph A shall accrue as follows: If, the first time LFUCG certifies that a SEP has been fully implemented pursuant to Paragraph 21, the SEP has not been Satisfactorily Completed, but LFUCG's performance of the SEP substantially complied with LFUCG's obligations under this Decree, then no stipulated penalty shall accrue while LFUCG carries out the work necessary to Satisfactorily Complete the SEP. LFUCG shall have no longer than 60 (sixty) days to carry out such additional work. If LFUCG certifies a second time that the SEP has been fully implemented, but the SEP has not been Satisfactorily Completed, the stipulated penalty shall accrue as of the date of the second

certification. If, the first time LFUCG certifies that a SEP has been fully implemented, the SEP has not been Satisfactorily Completed and LFUCG's performance of the SEP did not substantially comply with LFUCG's obligations under this Decree, then the stipulated penalty shall accrue as of the date of the first certification.

B. If LFUCG abandons work on any SEP, LFUCG shall pay:

For the Coldstream SEP:	$1,250,000
For the Green Infrastructure SEP:	$287,500

less any amounts of Eligible SEP Costs that EPA determines were expended in a manner consistent with the Consent Decree. The penalty under this Subparagraph shall accrue as of the date specified for completing the Project or the date performance ceases, whichever is earlier.

C. If LFUCG fails to comply with the schedules in Section VIII of this Consent Decree (Supplemental Environmental Projects) or in Appendix J to this Consent Decree (including the preparation of the SEP Completion Reports), for each failure to meet an applicable milestone LFUCG may be assessed Stipulated Penalties of $3,000 per month. Such penalties shall accrue from the date LFUCG was required to meet each such milestone, until compliance with the milestone is achieved.

D. LFUCG shall issue a retraction in the same or similar medium as the original statement, and may be assessed a stipulated penalty of $5,000 for each violation if it fails to comply with the requirements under Paragraph 26 regarding public statements related to the SEP.

47. Subject to the provisions of Subparagraphs A, B, and C of the immediately preceding Paragraph, Stipulated Penalties under this Section shall begin to accrue on the day

after performance is due or on the day a violation occurs, whichever is applicable, and shall continue to accrue until performance is Satisfactorily Completed or until the violation ceases. Stipulated Penalties shall accrue simultaneously for separate violations of this Consent Decree. LFUCG shall pay any Stipulated Penalty within thirty (30) days of receiving a written demand by one or both Plaintiffs, unless the Parties enter into Dispute Resolution, in which case the provisions of Paragraph 49 apply. The United States, or EPPC, or both may seek Stipulated Penalties under this Section. Where both seek Stipulated Penalties for the same violation of this Consent Decree, Defendant shall pay fifty (50) percent to the United States and fifty (50) percent to EPPC. Where only one Plaintiff demands Stipulated Penalties for a violation, and the other Plaintiff does not join in the demand within thirty (30) days of receiving the demand, or timely joins in the demand but subsequently elects to waive or reduce Stipulated Penalties for that violation, Defendant shall pay the Stipulated Penalties due for the violation to the Plaintiff making the demand, less any amount paid to the other Plaintiff. The determination by one Plaintiff not to seek Stipulated Penalties shall not preclude the other Plaintiff from seeking Stipulated Penalties.

48. The United States or EPPC may, in the unreviewable exercise of its respective discretion, reduce or waive any Stipulated Penalties otherwise due to that Plaintiff under this Consent Decree.

49. Stipulated Penalties shall continue to accrue as provided in Paragraph 47, above, during any Dispute Resolution, but need not be paid until the following:

A. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to the Court, LFUCG shall pay accrued penalties agreed or determined to be owing to

the United States within sixty (60) days of the effective date of the agreement or the receipt of EPA's decision or order;

B. If the dispute is appealed to the Court, LFUCG shall pay all accrued penalties determined by the Court to be owing within sixty (60) days of receiving the Court's decision or order, except as provided in Subparagraph C, below;

C. If the United States or LFUCG appeals the District Court's decision, LFUCG shall pay all accrued penalties determined to be owing within sixty (60) days of receiving the final appellate court decision.

50. LFUCG shall, as directed by the United States, pay Stipulated Penalties owing to the United States by EFT in accordance with Section V (Civil Penalty), Paragraph 9, above, or by certified or cashier's check in the amount due payable to the "U.S. Department of Justice," referencing DOJ No. 90-5-1-1-08858 and Civil Action Number 5:06-cv-386, delivered to the office of the United States Attorney, Eastern District of Kentucky, at 260 West Vine Street Lexington, KY 40507. If payment is due to EPPC under this Section, payment shall be made by certified check made payable to the Kentucky State Treasurer, referencing Civil Action Number 5:06-cv-386, and shall be sent to Director, Division of Enforcement, Department for Environmental Protection, 300 Fair Oaks Lane, Frankfort, KY 40601.

51. At the time of payments of stipulated penalties required by this Section, LFUCG shall simultaneously send written notice of payment and a copy of any transmittal documentation to the United States and EPPC in accordance with Section XVII of this Decree (Notices). The notices shall reference Civil Action Number 5:06-cv-386 and DOJ Number 90-5-1-1-08858.

52. If LFUCG fails to pay Stipulated Penalties according to the terms of this Consent

Decree, LFUCG shall be liable for interest on such penalties, as provided for in 28 U.S.C. §1961, accruing as of the date payment became due.

53. Subject to the provisions of Section XV of this Consent Decree (Effect of Settlement/Reservation of Rights), the Stipulated Penalties provided for in this Consent Decree shall be in addition to any other rights, remedies, or sanctions available to the United States or the Commonwealth for LFUCG's violation of this Consent Decree or applicable law. Where a violation of this Consent Decree is also a violation of the Clean Water Act, LFUCG shall be allowed a credit, for any Stipulated Penalties paid, against any statutory penalties imposed for such violation.

XII. FORCE MAJEURE

54. A "force majeure event" is any event beyond the control of LFUCG, its contractors, or any entity controlled by LFUCG that delays the performance of any obligation under this Consent Decree despite LFUCG's best efforts to fulfill the obligation. "Best efforts" includes anticipating any potential force majeure event and addressing the effects of any such event (a) as it is occurring and (b) after it has occurred, to prevent or minimize any resulting delay to the greatest extent possible. "Force Majeure" does not include LFUCG's financial inability to perform any obligation under this Consent Decree.

55. LFUCG shall provide notice to EPA and EPPC orally or by electronic or facsimile transmission as soon as possible, but not later than 72 hours after the time LFUCG first knew of, or by the exercise of due diligence, should have known of, a claimed force majeure event. LFUCG shall also provide written notice to the United States and EPPC as provided in Section XVII of this Consent Decree (Notices), within seven (7) days of the time LFUCG first

knew of, or by the exercise of due diligence, should have known of, the event. The notice shall state the anticipated duration of any delay, its cause(s), LFUCG's past and proposed actions to prevent or minimize any delay, a schedule for carrying out those actions, and LFUCG's rationale for attributing any delay to a force majeure event. Failure to provide oral and written notice as required by this Paragraph may be grounds for the United States to deny any claim of force majeure.

56. If the United States, after consultation with EPPC, agrees that a force majeure event has occurred, the United States will agree to extend the time for LFUCG to perform the affected requirements for the time necessary to complete those obligations. An extension of time to perform the obligations affected by a force majeure event shall not, by itself, extend the time to perform any other obligation. Where the United States agrees to a material extension of time, the appropriate modification shall be made pursuant to Section XX of this Consent Decree (Modification).

57. If the United States, after consultation with EPPC, does not agree that a force majeure event has occurred, or does not agree to the extension of time sought by LFUCG, the United States' position shall be binding, unless LFUCG invokes Dispute Resolution under Section XIII of this Consent Decree. In any such dispute, LFUCG bears the burden of proving, by a preponderance of the evidence, that each claimed force majeure event is a force majeure event, that LFUCG gave the notice required by Paragraph 55, that the force majeure event caused any delay that LFUCG claims was attributable to that event, and that LFUCG exercised best efforts to prevent or minimize any delay caused by the event.

XIII. DISPUTE RESOLUTION

58. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures of this Section shall not apply to actions by the United States or EPPC to enforce obligations of LFUCG that have not been disputed in accordance with this Section. Defendant's failure to seek resolution of a dispute under this Section shall preclude Defendant from raising any such issue as a defense to an action by the United States or EPPC to enforce any obligation of Defendant arising under this Decree.

59. Informal Dispute Resolution. Any dispute subject to dispute resolution under this Consent Decree shall first be the subject of informal negotiations. The dispute shall be considered to have arisen when LFUCG sends the United States and EPPC a written Notice of Dispute. Such Notice of Dispute shall state clearly the matter in dispute. The period of informal negotiations shall not exceed thirty (30) days from the date the dispute arises, unless that period is modified by written agreement. If the Parties cannot resolve a dispute by informal negotiations, then the position advanced by the United States, after consultation with EPPC, shall be considered binding unless, within twenty (20) days after the conclusion of the informal negotiation period, LFUCG invokes formal dispute resolution procedures as set forth below.

60. Formal Dispute Resolution. LFUCG shall invoke formal dispute resolution procedures, within the time period provided in the preceding Paragraph, by serving on the United States and EPPC a written Statement of Position regarding the matter in dispute. The Statement of Position shall include, but may not necessarily be limited to, any factual data, analysis, or

opinion supporting LFUCG's position and any supporting documentation relied upon by LFUCG.

61. The United States, after consultation with EPPC, shall serve its Statement of Position within forty-five (45) days of receipt of LFUCG's Statement of Position. The United States' Statement of Position shall include, but may not necessarily be limited to, any factual data, analysis, or opinion supporting that position and any supporting documentation relied upon by the United States. If within five (5) days of receiving the United States' Statement of Position, LFUCG requests to confer with the United States about the United States' Statement of Position, the United States will confer (in person and/or by telephone) with LFUCG, but such a conference shall be concluded no later than twenty-one (21) days after the issuance of the United States' Statement of Position. The United States will reaffirm its Statement of Position or, if the United States decides to amend its Statement of Position, the United States will amend its Statement of Position, within fourteen (14) days after the conclusion of the conference. If the United States fails to reaffirm or amend its Statement of Position, the Statement of Position shall be deemed reaffirmed. The United States' Statement of Position shall be binding on LFUCG unless LFUCG files a motion for judicial review of the dispute in accordance with the following Paragraph.

62. LFUCG may seek judicial review of the dispute by filing with the Court and serving on the United States and EPPC in accordance with Section XVII of this Consent Decree (Notices) a motion requesting judicial resolution of the dispute. If no conference was requested pursuant to the previous Paragraph, LFUCG's motion must be filed within fourteen (14) days of receipt of the United States' Statement of Position pursuant to the preceding Paragraph. If a

conference was requested pursuant to the previous Paragraph, LFUCG's motion must be filed within fourteen (14) days of receipt of the United States' reaffirmation of its original Statement of Position or issuance of an amended Statement of Position pursuant to the preceding Paragraph. The motion shall contain a written statement of LFUCG's position on the matter in dispute, including any supporting factual data, analysis, opinion, or documentation, and shall set forth the relief requested and any schedule within which the dispute must be resolved for orderly implementation of the Consent Decree.

63. The United States shall respond to LFUCG's motion within the time period allowed by the Local Rules of this Court. LFUCG may file a reply memorandum, to the extent permitted by the Local Rules.

64. Except as otherwise provided in this Consent Decree, in any dispute under this Section, LFUCG shall bear the burden of demonstrating that its position complies with the Consent Decree and better furthers the Objectives of the Consent Decree. The United States reserves the right to argue that its position is reviewable only on the administrative record and must be upheld unless arbitrary and capricious or otherwise not in accordance with law, and LFUCG reserves the right to oppose any such argument.

65. The invocation of dispute resolution procedures under this Section shall not, by itself, extend, postpone, or affect in any way any obligation of LFUCG under this Consent Decree, unless and until final resolution of the dispute so provides. Stipulated Penalties shall be assessed and paid as provided in Section XI (Stipulated Penalties).

XIV. INFORMATION COLLECTION AND RETENTION

66. The United States, the Commonwealth, and their representatives, including attorneys, contractors, and consultants, shall have the right to enter LFUCG facilities at all reasonable times, upon presentation of credentials, to:

a. monitor the progress of activities required under this Consent Decree;

b. verify any data or information submitted to the United States or the Commonwealth in accordance with the terms of this Consent Decree;

c. obtain samples;

d. obtain documentary evidence, including photographs and similar data; and

e. assess LFUCG's compliance with this Consent Decree.

67. Until five (5) years after the termination of this Consent Decree, LFUCG shall retain, and shall instruct its respective contractors and agents to preserve, all non-identical copies of all records and documents (including records or documents in electronic form) in its or its contractors' or agents' possession or control, or that come into its or its contractors' or agents' possession or control, and that demonstrate or document LFUCG's compliance or noncompliance with the obligations of this Consent Decree. Drafts of final documents or plans, and non-substantive correspondence and emails do not need to be retained. This record retention requirement shall apply regardless of any corporate or institutional document-retention policy to the contrary. At any time during this record-retention period, the United States or the Commonwealth may request copies of any documents or records required to be maintained under this Paragraph.

68. Before destroying any documents or records subject to the requirements of the

preceding Paragraph, LFUCG shall notify the United States and EPPC at least ninety (90) days prior to the destruction of any such records or documents, and, upon request by the United States or EPPC, LFUCG shall deliver any such records or documents to EPA or EPPC. LFUCG may assert that certain documents, records, or other information is privileged under the attorney-client privilege or any other privilege recognized by federal law. If LFUCG asserts such a privilege, it shall provide the following: a) the title of the document, record, or information; b) the date of the document, record, or information; c) the name and title of the author of the document, record, or information; d) the name and title of each addressee and recipient; e) a description of the subject of the document, record, or information; and f) the privilege asserted.

69. This Consent Decree in no way limits or affects any right of entry and inspection, or any right to obtain information, held by the United States or the Commonwealth pursuant to applicable federal or state laws, regulations, or permits, nor does it limit or affect any duty or obligation of LFUCG to maintain records or information imposed by applicable federal or state laws, regulations, permits, or orders.

XV. EFFECT OF SETTLEMENT/RESERVATION OF RIGHTS

70. This Consent Decree resolves the civil claims of the United States and the EPPC for the violations alleged in the Complaint filed in this action through the date of lodging. As a special reservation, natural resource trustees reserve their claim against LFUCG for liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments, including regarding the fish kill that resulted from the discharge of partially treated sewage due to a bypass at Town Branch WWTP on or about August 31, 2007,

and the fish kill that resulted due to a bypass at East Hickman pump station on or about January 7, 2008.

71. The United States and the Commonwealth reserve all legal and equitable remedies available to enforce the provisions of this Consent Decree, except as expressly stated herein, and LFUCG reserves all defenses thereto. This Consent Decree shall not be construed to prevent or limit the rights of the United States or the Commonwealth to obtain penalties or injunctive relief under the Clean Water Act or its implementing regulations, or under other federal or state laws, regulations, or permit conditions, except as expressly specified in the preceding Paragraph. The United States and the Commonwealth further reserve all legal and equitable remedies to address any imminent and substantial endangerment to the public health or welfare or the environment arising at, or posed by, LFUCG, whether related to the violations addressed in this Consent Decree or otherwise.

72. This Consent Decree is not a permit, or a modification of any permit, under any federal, state, or local laws or regulations, and LFUCG's compliance with the Consent Decree shall be no defense to any action commenced pursuant to any such laws, regulations, or permits. LFUCG is responsible for achieving and maintaining complete compliance with all applicable federal, state, and local laws, regulations, and permits. The United States and the Commonwealth do not, by their consent to the entry of this Consent Decree, warrant or aver in any manner that LFUCG's compliance with any aspect of this Consent Decree will result in compliance with provisions of the Clean Water Act or with any other provisions of federal, state, or local laws, regulations, or permits.

73. This Consent Decree does not limit or affect the rights of LFUCG or of the United

States or the Commonwealth against any third parties, not party to this Consent Decree. The effect of this Consent Decree on the rights of third parties, not party to this Consent Decree, against LFUCG shall be as provided by law.

74. This Consent Decree shall not be construed to create rights in, or grant any cause of action to, any third party not party to this Consent Decree.

XVI. COSTS

75. The Parties shall bear their own costs of this action, including attorneys fees, except that the United States and the Commonwealth shall be entitled to collect the costs (including attorneys fees) incurred in any action necessary to collect any portion of the civil penalty or any Stipulated Penalties due but not paid by LFUCG.

XVII. NOTICES

76. Unless otherwise specified herein, whenever notifications, submissions, or communications are required by this Consent Decree, they shall be made in writing and addressed as follows:

To the United States:

Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Box 7611 Ben Franklin Station
Washington, D.C. 20044-7611
Re: DOJ No. 90-5-1-1-08858

Chief
Water Programs Enforcement Branch
Environmental Protection Agency Region 4
61 Forsyth St., SW
Atlanta, GA 30303

& Office of Water Legal Support
Office of Regional Counsel
Environmental Protection Agency Region 4
61 Forsyth St., SW
Atlanta, GA 30303

To EPA only, as opposed to the United States:

Chief
Water Programs Enforcement Branch
Environmental Protection Agency Region 4
61 Forsyth St., SW
Atlanta, GA 30303

& Office of Water Legal Support
Office of Regional Counsel
Environmental Protection Agency Region 4
61 Forsyth St., SW
Atlanta, GA 30303

For verbal notification:
Chief, Water Programs Enforcement
Branch 404/562-9938

To EPPC:

Director of the Division of Enforcement
Department for Environmental Protection
300 Fair Oaks Lane
Frankfort, KY 40601

For verbal notification:
Director of the Division of Enforcement
502/564-2150

To LFUCG:

Commissioner of Law
Lexington-Fayette Urban County
Government
200 East Main Street
Lexington, KY 40507
(859) 258-3500

Commissioner of Dept. for Env. Quality
Lexington-Fayette Urban County
Government
200 East Main Street
Lexington, Kentucky 40507
(859) 425-2800

77. Any Party may, by written notice to the other Parties, change its designated notice recipient or notice address.

78. Notices submitted pursuant to this Section shall be deemed submitted upon the date they are postmarked and mailed or provided to a reputable overnight delivery service, unless otherwise provided in this Consent Decree or by mutual agreement of the Parties in

writing.

XVIII. EFFECTIVE DATE

79. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court.

XIX. RETENTION OF JURISDICTION

80. The Court shall retain jurisdiction over the case until termination of this Consent Decree, for the purpose of resolving disputes arising under this Decree or entering orders modifying this Decree, pursuant to Sections XIII (Dispute Resolution) and XX (Modification), or effectuating or enforcing compliance with the terms of this Decree.

XX. MODIFICATION

81. The terms of this Consent Decree may be modified only by a subsequent written agreement signed by the United States, EPPC and LFUCG or by further order of the Court. Where a modification agreed-upon by the United States, EPPC and LFUCG constitutes a material change to any term of this Decree, it shall be effective only upon approval by the Court. Non-material changes to this Decree (including Appendices) may be made by written agreement of the Parties without court approval. Except as provided in Section X relating to EPA/EPPC review and approval of deliverables, any changes to the deadlines set forth in Paragraph 15.G (Sanitary Sewer System and WWTP Remedial Measures Plan) of this Consent Decree shall be considered a material change.

82. Any disputes concerning modification of this Decree shall be resolved pursuant to Section XIII of this Decree (Dispute Resolution), provided, however, that, instead of the burden of proof provided by Paragraph 64, the Party seeking the modification bears the burden of

demonstrating that it is entitled to the requested modification in accordance with Federal Rule of Civil Procedure 60(b).

XXI. TERMINATION

83. The Consent Decree is subject to termination, in whole or in part, after LFUCG certifies that it has met all requirement of this Consent Decree, including, without limitation, (a) completion of all SEPs and Commonwealth Environmental Projects, (b) payment of all penalties and stipulated penalties due, (c) submission and approval of all plans required in Sections VI and VII or in any amendment to this Consent Decree, and (d) completion of all work and implementation of all the requirements in the plans required in Sections VI and VII of this Consent Decree or in any amendment to this Consent Decree. EPA/EPPC's determination that the Consent Decree should be terminated shall be based on a consideration of whether all of the requirements listed above have occurred. Notwithstanding the above, Section VI (Compliance Measures Relating to Storm Sewer System) of this Consent Decree is subject to termination after LFUCG certifies that it has met all requirements of Section VI of the Consent Decree for a period of five (5) years following the Effective Date of this Consent Decree.

84. LFUCG may serve upon the United States and EPPC a request that they jointly make a determination that this Consent Decree be terminated in whole or in part. Any such request shall be in writing and shall include a certification that the requirements listed in the above Paragraph have been met. If the United States and EPPC jointly agree that LFUCG has met all of the requirements listed above, the Parties shall submit for the Court's approval, a joint stipulation terminating the Consent Decree, or appropriate portions thereof. If the United States and EPPC determine not to seek termination of the Consent Decree in whole or in part because

all of the requirements listed above were not met, they shall so notify LFUCG in writing. The notice shall summarize the basis for its decision and describe the actions necessary to achieve final compliance. If LFUCG disagrees with any such determination, it shall invoke the dispute resolution procedures of this Consent Decree before filing any motion with the Court regarding the disagreement. However, LFUCG shall not seek dispute resolution of any dispute regarding termination until ninety (90) days after service of its Request for Termination.

XXII. PUBLIC PARTICIPATION

85. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations indicating that the Consent Decree is inappropriate, improper, or inadequate. LFUCG consents to entry of this Consent Decree without further notice. This Paragraph does not create any rights exercisable by LFUCG.

XXIII. SIGNATORIES/SERVICE

86. Each undersigned representatives of LFUCG and EPPC and the Assistant Attorney General for the Environment and Natural Resources Division of the United States Department of Justice, certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind the Party he or she represents to this document.

87. This Consent Decree may be signed in counterparts, and its validity shall not be challenged on that basis.

88. LFUCG agrees not to oppose entry of this Consent Decree by the Court or to

challenge any provision of the Decree, unless the United States has notified LFUCG in writing that it no longer supports entry of the Decree.

89. LFUCG agrees to accept service of process by mail with respect to all matters arising under or relating to this Consent Decree and to waive the formal service requirements set forth in Rules 4 and 5 of the Federal Rules of Civil Procedure and any applicable Local Rules of this Court including, but not limited to, service of a summons.

XXIX. INTEGRATION

90. This Consent Decree and its Appendices constitute the final, complete, and exclusive agreement and understanding among the Parties with respect to the settlement embodied in the Decree and supersede all prior agreements and understandings, whether oral or written, concerning the settlement embodied herein. Other than the Appendices, which are attached to and incorporated in this Decree, and deliverables that are subsequently submitted and approved pursuant to this Decree, no other document, nor any representation, inducement, agreement, understanding, or promise, constitutes any part of this Decree or the settlement it represents, nor shall it be used in construing the terms of this Decree.

XXV. FINAL JUDGMENT

91. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment of the Court as to the United States, the Commonwealth,

and LFUCG. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

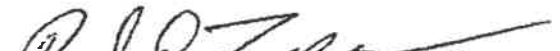
Dated and entered this 31 day of January, 2011.

KSF

UNITED STATES DISTRICT JUDGE
Eastern District of Kentucky

WE HEREBY CONSENT to the entry of this Consent Decree in *United States, et al. v. LFUCG*, No. 5:06-cv-386 (E.D. Ky), subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

FOR PLAINTIFF UNITED STATES OF AMERICA:



RONALD J. TENPAS
Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division

VALERIE K. MANN
Attorney of Record for United States
Trial Attorney
U.S. Department of Justice
Environment and Natural Resources Division
Environmental Enforcement Section
P.O. Box 7611
Ben Franklin Station
Washington, D.C. 20044-7611
Telephone: 202-616-8756
Facsimile: 202-514-2583

WE HEREBY CONSENT to the entry of this Consent Decree in *United States, et al. v. LFUCG*, No. 5:06-cv-386 (E.D. Ky), subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

FOR PLAINTIFF UNITED STATES OF AMERICA (Continued):

JAMES A. ZERHUSEN
Acting United States Attorney
Eastern District of Kentucky

ANDREW SPARKS
Attorney of Record for United States
Assistant United States Attorney
Eastern District of Kentucky
260 West Vine Street
Lexington, Kentucky 40507
Telephone: (859) 233-2661
Facsimile: (859) 233-2666

WE HEREBY CONSENT to the entry of this Consent Decree in *United States, et al. v. LFUCG*, No. 5:06-cv-386 (E.D. Ky), subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

FOR PLAINTIFF UNITED STATES OF AMERICA (Continued):

MARY J. WILKES
Regional Counsel
United States Environmental Protection Agency
Region 4
61 Forsyth Street
Atlanta, GA 30303

Of Counsel:
PAUL SCHWARTZ
Assistant Regional Counsel
United States Environmental Protection Agency
Region 4
61 Forsyth Street
Atlanta, GA 30303
Telephone: (404) 562-9576
Facsimile: (404) 562-9486

WE HEREBY CONSENT to the entry of this Consent Decree in *United States, et al. v. LFUCG*, No. 5:06-cv-386 (E.D. Ky), subject to the public notice and comment provisions of 28 C.F.R. § 50.7:

FOR PLAINTIFF UNITED STATES OF AMERICA (Continued):

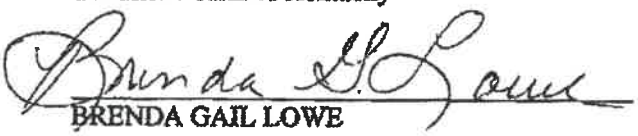
GRANTA Y. NAKAYAMA
Assistant Administrator
Office of Enforcement & Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Of Counsel:
ELYSE DI BIAGIO-WOOD
Water Enforcement Division
Office of Civil Enforcement, US EPA
Mail Code: 2243A
1200 Pennsylvania Avenue, NW
Washington, DC 20460

WE HEREBY CONSENT to the entry of this Consent Decree in *United States, et al. v. LFUCG*, No. 5:06-cv-386 (E.D. Ky):

FOR PLAINTIFF COMMONWEALTH OF KENTUCKY, ENVIRONMENTAL & PUBLIC PROTECTION CABINET:

ROBERT D. VANCE
Secretary
Environmental & Public Protection Cabinet
Commonwealth of Kentucky



BRENDA GAIL LOWE
SHARON R. VRIESENGA
Office of Legal Services
5TH Floor, Capital Plaza Tower
Frankfort, KY 40601
Telephone: (502) 564-5576
Facsimile: (502) 564-6131

WE HEREBY CONSENT to the entry of this Consent Decree in *United States, et al. v. LFUCG*, No. 5:06-cv-386 (E.D. Ky):

FOR DEFENDANT LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

MAYOR JIM NEWBERRY
Lexington-Fayette Urban County Government
12th Floor, Government Center
200 East Main Street
Lexington, Kentucky 40507

JOHN C. BENDER
Attorney of Record for LFUCG
Greenebaum Doll & McDonald PLLC
300 West Vine Street, Suite 1100
Lexington, KY 40507-1665
Telephone: (859) 288-4607
Facsimile: (859) 367-3806

Eastern District of Kentucky
FILED
JUL - 9 2015
AT LEXINGTON
ROBERT R. CARR
CLERK U.S. DISTRICT COURT

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF KENTUCKY
CENTRAL DIVISION at LEXINGTON

EXHIBIT F-3

THE UNITED STATES OF AMERICA AND THE COMMONWEALTH OF KENTUCKY,	)	
Plaintiffs,	)	
v.	)	**Civil Action No. 5:06-CV-386-KSF**
LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT,	)	
Defendant.	)	

FIRST MATERIAL MODIFICATION TO CONSENT DECREE

WHEREAS, in November of 2006, the United States of America ("United States"), on behalf of the United States Environmental Protection Agency ("EPA"), and the Commonwealth of Kentucky ("Commonwealth"), on behalf of the Commonwealth's Environmental and Public Protection Cabinet ("EPPC"), filed a complaint against Lexington-Fayette Urban County Government ("LFUCG") under Section 309(b) of the Clean Water Act ("CWA"), alleging that LFUCG violated and continued to violate Section 301 of the CWA; and

WHEREAS, on March 14, 2008, the United States and the Commonwealth lodged a Consent Decree resolving the claims alleged in the complaint; and

WHEREAS, the Commonwealth's Energy and Environment Cabinet ("EEC") was established pursuant to Executive Order in June of 2008 as the successor agency to the EPPC

with responsibility for the environmental enforcement functions of the former EPPC;

WHEREAS, on July 25, 2008, the Plaintiffs, following a period of public comment, filed a Motion to Enter the Consent Decree; and

WHEREAS, on August 7, 2008, the Court issued an Order denying Plaintiffs' Motion to Enter the Consent Decree; and

WHEREAS, following an appeal of this Court's August 7, 2008 Order denying Plaintiffs' Motion to Enter the Consent Decree, the Plaintiffs filed a second Motion to Enter the Consent Decree on March 16, 2010; and

WHEREAS, on January 3, 2011, the Court entered the Consent Decree, and Section XVIII of the Consent Decree establishes the Effective Date of the Consent Decree as the date it was entered by the Court; and

WHEREAS, Paragraph 15.G.(vii) of the Consent Decree provides that the Sanitary Sewer System and WWTP Remedial Measures Plan submitted by LFUCG pursuant to the Consent Decree shall provide an expeditious schedule for design, construction, and placement in service of all proposed measures that is in no event "later than eleven (11) years from the Effective Date of the Consent Decree, or in the event that remedial measures include a WWTP upgrade, thirteen (13) years from the Effective Date of Consent Decree only for such WWTP upgrade and other remedial measures associated with the WWTP upgrade"; and

WHEREAS, Section 15.G.(vii) of the Consent Decree further provides that these deadlines "may only be extended with approval of EPA and EPPC, for good cause, in accordance with Section XX (Modification)"; and

WHEREAS, Paragraph 34 of the Consent Decree provides in part that, "[i]f EPA/EPPC

fails to approve, or otherwise act on a submittal within sixty (60) days of receipt of the submittal, then any subsequent milestone or completion date that is dependent upon such action by EPA/EPPC shall be extended by the equivalent number of days beyond the sixty (60) day review period for the submittal that is used by EPA/EPPC for the approval or other action"; and

WHEREAS, LFUCG submitted its Sanitary Sewer System and WWTP Remedial Measures Plan (RMP) in three parts, Group 1 RMP, Group 2 RMP, and Group 3 RMP, with the Group 1 RMP submitted on October 12, 2011, the Group 2 RMP submitted on April 13, 2012, and the Group 3 RMP submitted on October 11, 2012, but EPA/EEC did not approve or otherwise act upon the originally submitted RMPs or the revised RMPs submitted in response to EPA/EEC comments, within the sixty (60) day review period specified in Paragraph 34, so that LFUCG is entitled to extensions of the Paragraph 15.G.(vii) deadlines pursuant to Paragraph 34; and

WHEREAS, EPA/EEC, on November 18, 2014, approved the RMPs in all respects except for the schedules contained in the RMPs, which were disapproved because they did not comply with the deadlines established under Section 15.G.(vii) of the Consent Decree; and

WHEREAS, after applying Paragraph 34 to adjust the Consent Decree deadlines for designing, constructing and placing into service all remedial measures, the deadlines for LFUCG to place remedial measures into service are as follows:

Remedial Measures Not Associated With WWTP Upgrade

RMP	Deadline
Group 1	September 9, 2024
Group 2	March 9, 2024
Group 3	September 10, 2023

Remedial Measures Associated With WWTP Upgrade

RMP	Deadline
Group 1	September 9, 2026
Group 2	March 9, 2026
Group 3	September 9, 2025

WHEREAS, at or around the lodging of the Consent Decree, the costs of the injunctive relief were estimated to be $250-$300 million. *See* United States' Memorandum in Support of Motion to Reconsider Court's Order Denying Motion to Enter Consent Decree, filed 8/21/08, ECF 49-2, at p.10.

WHEREAS, at the time the Consent Decree was signed by the Parties, LFUCG did not anticipate the number and cost of projects that it would ultimately determine to be necessary after conducting the comprehensive Sewer System Assessment that it has now completed pursuant to Paragraph 15.B. of the Consent Decree; and

WHEREAS, the RMPs describe remedial measures for the Sanitary Sewer System and WWTPs that consist of 82 discrete projects that LFUCG estimates will cost approximately $590 million to design, construct and place into service; and

WHEREAS, the Parties agree that, in light of the unanticipated increased scope and cost of projects that will be implemented pursuant to the RMPs, an extension of the deadline for completion of design, construction and placement into service of all remedial measures described in the RMPs is reasonable and equitable, and in the circumstances of this case would be for "good cause"; and

WHEREAS, the Parties have agreed that a reasonable deadline for completion of design,

construction, and placement into service of all remedial measures described in the RMPs is December 31, 2026; and

WHEREAS, the Parties have further agreed that this December 31, 2026 deadline will apply to all remedial measures, including measures associated with WWTP upgrades, and that this deadline will not be further adjusted to reflect delays in EPA/EEC review, approval or other action relating to the RMPs;

NOW, THEREFORE, it is hereby ORDERED, ADJUDGED and DECREED as follows:

1. Paragraph 15.G.(vii) of the Consent Decree shall be removed and replaced with the following language:

"The Sanitary Sewer System and WWTP Remedial Measures Plan shall provide estimated capital, O & M, and present value costs for each identified remedial measure. Such costs shall be provided in consistent, year-specific dollars. The Sanitary Sewer System and WWTP Remedial Measures Plan shall provide an expeditious schedule for design, construction, and placement in service of all proposed measures. Such schedule shall provide for completion of construction and placement in service of all proposed measures no later than December 31, 2026. The final deadline for completion of construction and placement in service of all proposed measures by December 31, 2026, shall not be subject to extension by operation of Paragraph 34 of this Consent Decree and may only be extended with approval of EPA and EEC, for good cause, in accordance with Section XX (Modification). LFUCG shall identify the dates for preliminary design, complete design, complete permitting, award contract, begin construction, and complete construction dates for each measure proposed in the Sanitary Sewer System and WWTP Remedial Measures Plan."

Dated and entered this 6 day of July 2015.

Karen K. Caldwell
UNITED STATES DISTRICT JUDGE
Eastern District of Kentucky

WE HEREBY CONSENT to the entry of this First Material Modification to Consent Decree in United States, et al. v. Lexington-Fayette Urban County Government, Civil Action No. 5:06-cv-386, subject to the public notice and comment requirements of 28 C.F.R. §50.7.

FOR THE UNITED STATES OF AMERICA:

Sam Hirsch Acting AAG

JOHN C. CRUDEN
Assistant Attorney General
Environment and Natural Resources Division
United States Department of Justice

Valerie K. Mann

Valerie K. Mann (COUNSEL OF RECORD)
Trial Attorney
Environmental Enforcement Section
Environment and Natural Resources Division
United States Department of Justice
Post Office Box 7611
Washington, D.C. 20044
Telephone: (202) 616-8756
Facsimile: (202) 616-2427

KERRY B. HARVEY
United States Attorney
Eastern District of Kentucky

s/ Andrew W. Sparks

ANDREW SPARKS (COUNSEL OF RECORD)
Assistant United States Attorney
Eastern District of Kentucky
260 West Vine Street, Suite 300
Lexington, KY 40507
Telephone: (859) 233-2661, ext 148
Facsimile: (859) 233-2533

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MARY J. WILKES
Regional Counsel
United States Environmental Protection Agency
Region 4
61 Forsyth St., SW
Atlanta, GA 30303

Of Counsel:
PAUL SCHWARTZ
Assistant Regional Counsel
United States Environmental Protection Agency
Region 4
61 Forsyth Street
Atlanta, GA 30303
Telephone: (404) 562-9576
Facsimile: (404) 562-9486

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MARK POLLINS
Chief, Water Enforcement Division
Office of Enforcement & Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

LOREN DENTON
Chief, Municipal Enforcement Branch
Water Enforcement Division
Office of Enforcement & Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

ROBERT FENTRESS
Attorney, Municipal Enforcement Branch
Water Enforcement Division
Office of Enforcement & Compliance Assurance
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

FOR THE COMMONWEALTH OF KENTUCKY, ENERGY AND ENVIRONMENT CABINET (formerly the ENVIRONMENTAL & PUBLIC PROTECTION CABINET):

JOHN WEST (COUNSEL OF RECORD)
Office of General Counsel
Kentucky Energy and Environment Cabinet
2 Hudson Hollow
Frankfort, KY 40601
Telephone: (502) 564-2356, ext. 707
Facsimile: (502) 564-9212

FOR THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

MAYOR JIM GRAY
Lexington-Fayette Urban County Government
12th Floor, Government Center
200 East Main Street
Lexington, KY 40507

JOHN C. BENDER
Attorney of Record for LFUCG
Dinsmore & Shohl LLP
Lexington Financial Center
250 West Main Street
Suite 1400
Lexington, KY 40507
Telephone (859) 425-1093
Facsimile (859) 425-1099