

APPENDIX A

**Infrastructure Development Agreement for Projects
Submitted to LFUCG on or after October 1, 2016**

This Agreement is made and entered at Lexington, Kentucky this _____ day of _____ by and between:

_____ hereinafter referred to as the Developer (whether an individual, partnership, or corporation);

_____ hereinafter referred to as the Engineer (whether an individual, partnership, or corporation); and the Lexington-Fayette Urban County Government, hereinafter referred to as LFUCG.

Whereas the Developer intends to develop a parcel of land in Fayette County known as:

_____ hereinafter referred to as the Project; and whereas the Developer intends to construct infrastructure that will be owned, operated, and maintained by the LFUCG (or regulated by the LFUCG);

Whereas the Engineer has been retained by the Developer to provide planning, design, and construction phase engineering services related to the infrastructure, including the provision of a Resident Project Representative;

Whereas the LFUCG intends to furnish urban services to the above described Project and will, upon transfer of ownership to the LFUCG of the infrastructure necessary to provide the services, undertake the operation and maintenance of said infrastructure.

Therefore, the Developer, the Engineer, and the LFUCG agree as follows:

The LFUCG shall:

1. Comply with the requirements of the Procedures Manual for Infrastructure Development.
2. Make decisions and carry out its responsibilities in a timely manner so as not to delay the services of the Engineer or the Developer.

The Developer shall:

1. Comply with the requirements of the Procedures Manual for Infrastructure Development.
2. Negotiate the fee for the services of the Engineer. The services of the Engineer shall be provided at the Developer's sole cost. If the Developer changes the Engineer, the Developer shall notify the Division of Engineering and a new Agreement shall be executed among the LFUCG, Developer, and the Developer's replacement Engineer.
3. Select a Construction Contractor to construct the infrastructure in accordance with the Contract Documents. The Developer shall bear the full cost for the services of the Construction Contractor.
4. Conduct periodic inspections of the Work during construction to ensure that the Work is proceeding satisfactorily.
5. Deliver to the Division of Engineering a Performance/Warranty Surety in accordance with the requirements of the Procedures Manual for Infrastructure Development.
6. Provide to LFUCG complete access to the work during design and construction.
7. Convey all right, title, and interest in the facilities to the LFUCG without cost to the LFUCG and without encumbrances of any nature in such a form or documents as deemed necessary by the LFUCG, when said infrastructure has been accepted by the Division of Engineering.
8. Obtain all local, state, and federal permits.
9. Procure and maintain Commercial General Liability Insurance providing coverage at least as broad as Insurance Services Office (ISO) Form CG-0001 (07/98) with:

- a. Combination of primary and umbrella coverage limits of not less than \$1,000,000 per occurrence and a \$2,000,000 aggregate for bodily injury and property damage.
- b. Endorsements naming as additional insureds, "The Lexington-Fayette Urban County Government, its elected and appointed officials, employees, agents, boards, consultants, assigns, volunteers and successors in interest."
- c. Endorsement that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice to Lexington-Fayette Urban County Government's Division of Risk Management.

The Engineer shall:

1. Comply with the requirements of the Procedures Manual for Infrastructure Development.
2. Prepare Improvement Plans, Construction Specifications, and other Contract Document items in accordance with the Division of Engineering Manuals and Standard Drawings.
3. Provide construction phase services as described in Attachment A-1.
4. Prepare record drawings of the infrastructure and submit one copy each to the LFUCG Division of Engineering, LFUCG Division of Water Quality, the Developer, and the Contractor.
5. Be responsible for the technical accuracy of its services, and the documents resulting therefrom, and acknowledge and agree that the LFUCG shall not be responsible for discovering deficiencies therein.
6. Attend meetings with the Planning Commission, Urban County Council, and neighborhood meetings as required during the course of the project.
7. Meet the following business requirements:
 - a. Individual licensure in good standing with the Kentucky Board of Registration for Professional Engineers and Land Surveyors;
 - b. Firm licensure in good standing as an Engineering company in Kentucky, if work is to be accomplished other than as a sole practitioner;
 - c. Coverage under a license to do business in Fayette County;
8. Procure and maintain Professional Liability Insurance providing coverage at least or as broad as current ISO form with the following provisions:
 - a. \$1,000,000 per occurrence with Business Interruption exposure covered.
 - b. Endorsement that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice to Lexington-Fayette Urban County Government's Division of Risk Management.
9. Procure and maintain Commercial General Liability Insurance providing coverage at least as broad as ISO Form CG-0001 (07/98) with:
 - a. Combination of primary and umbrella coverage limits of not less than \$1,000,000 per occurrence and a \$2,000,000 aggregate for bodily injury and property damage.
 - b. Endorsements naming as additional insureds, "The Lexington-Fayette Urban County Government, its elected and appointed officials, employees, agents, boards, consultants, assigns, volunteers and successors in interest."
 - c. Endorsement that coverage shall not be suspended, voided, canceled by either party, reduced in coverage or in limits except after thirty (30) days prior written notice to Lexington-Fayette Urban County Government's Division of Risk Management.

If all valid and collectible insurance were exhausted, the following indemnification clause shall be invoked:

To the fullest extent permitted by law, each party to this Agreement shall indemnify and hold harmless the other parties, their officers, directors, partners and employees from and against any and all costs, losses and damages (including but not limited to all fees and charges of attorneys and design professionals, and all court, arbitration or other dispute resolution costs) caused by its negligent acts, errors or omissions, or those of its officers, directors, partners, employees, agents or consultants in the performance of its duties and responsibilities under this Agreement. To the fullest extent permitted by law, each party's total liability to the other parties shall not exceed the percentage share that party's negligence bears to the total negligence of all parties hereto and all other negligent entities or individuals.

This Agreement shall be governed and construed in accordance with the laws of the Commonwealth of Kentucky. Any action at law, suit in equity, or judicial proceeding for the enforcement of this Agreement or any

provision thereof shall be instituted and maintained in any court of competent jurisdiction only in the County of Fayette, Commonwealth of Kentucky.

The LFUCG, the Engineer, and the Developer each binds itself and its partners, successors and assigns to the other parties to this Agreement and neither the LFUCG, the Engineer, or the Developer shall assign, sublet, or transfer its interest in this Agreement without the written consent of the others. Nothing herein shall be construed as creating any personal liability on the part of any officer, director, employee, agent, of any public body which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the LFUCG, the Engineer, and the Developer.

If any section, clause, or provision of this Agreement shall be held invalid, such holding of invalidity shall not affect the validity of any remaining section, clause, paragraph, portion, or provision of this Agreement.

This Agreement, together with Attachment A-1 hereto, supercedes any previous agreements, oral or written, between the LFUCG, the Engineer, and the Developer and represents the entire agreement between the parties regarding the infrastructure constructed under this Agreement; provided, however, that Developer and Engineer may enter into a separate agreement, to which LFUCG is not a party, addressing in greater detail the relationship between Developer and Engineer relative to the project. No other agreements or representations, oral or written, have been made by the LFUCG, the Engineer, or the Developer relative to this Agreement.

This Agreement may not be altered, modified, or amended except in writing properly executed by an authorized representative of the LFUCG, the Engineer, and the Developer.

Developer:

By: _____

Name: _____

Title: _____

Engineer:

By: _____

Name: _____

Title: _____

LFUCG:

By: _____

Name: _____

Title: _____