

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT (hereinafter the "Memorandum") is made and entered into as of the 1st day of October, 2018, and shall be binding and effective until and including October 1, 2038, by and between the County of Marshall, Kentucky, a county and political subdivision of the Commonwealth of Kentucky, with its address at 1101 Main Street, Benton, Kentucky 42025 (hereinafter the "County") and the Marshall County Sanitation District, a public body politic and a political subdivision of the Commonwealth of Kentucky, with its address at P.O. Box 432, Benton, Kentucky 42025, (hereinafter the "District").

WITNESS:

WHEREAS, the County has previously determined that it is in the public interest to construct certain improvements (the "Project") to a wastewater system (the "System") located within the County now being operated by the Marshall County Sanitation District (the "District"); and

WHEREAS, the County has made application to the Kentucky Infrastructure Authority (the "Authority") for the purpose of securing funds to construct the Project; and

WHEREAS, in order to obtain such monies, the County is concurrently herewith entering into an Assistance Agreement dated as of October 1, 2018 (the "Assistance Agreement") with the Authority, a copy of which is attached hereto as Exhibit A and made a part hereof, establishing the terms and conditions under which the Authority will make a loan (the "Loan") to the County under the Assistance Agreement to construct the Project; and

WHEREAS, in connection with the advancement of the Loan under the Assistance Agreement, and in order to enable the County to satisfy its obligations under the Assistance Agreement, it is necessary and desirable for the County and the District to enter into this Memorandum in order to establish certain obligations of the District with respect to the operation of the Project and the System.

WHEREAS, the Grantee has agreed to implement the Project and be the recipient of certain funds from the Authority under the terms and conditions enumerated herein and to see to the implementation of the Project;

NOW THEREFORE, in consideration of the construction of the Project by the County, the mutual covenants and conditions contained herein and other good and valuable consideration, the receipt, mutuality and sufficiency of all of which is hereby acknowledged by the parties hereto, the County and the District each agree as follows:

SECTION 1 - OBLIGATIONS OF THE COUNTY

The County covenants and agrees, conditioned upon the timely performance by the District of its obligations, to undertake the following:

- A. The County shall undertake the construction of the Project in accordance with the plans, designs and specifications prepared by the Engineers for the County, applying the proceeds of the Loan received under the Assistance Agreement, together with any other available funds of the County, to the payment of the costs of the Project, all in accordance with the requirements of the Assistance Agreement.
- B. Upon completion and closeout of the Project, the County shall transfer ownership and any and all responsibility for operation and maintenance of the Project to the District.
- C. The County shall cooperate with the District in order to facilitate the obligations set out in this Memorandum.

SECTION 2 - OBLIGATIONS OF THE DISTRICT

The District covenants and agrees, conditioned upon the timely performance by the County of its obligations under this Memorandum, to the following:

- A. The District shall do all things necessary to acquire, or assist the County in acquiring, all proposed and necessary sites, easements and rights of way necessary or required in respect of the Project.
- B. The District shall assist the County in complying with all federal requirements applicable to the Loan (including those imposed by P.L. 113-76, Consolidated Appropriations Act, 2015 (the "2015 Appropriations Act") and related Program policy guidelines) which includes, among other requirements, that all of the iron and steel products used in the Project are to be produced in the United States ("American Iron and Steel Requirement") unless (i) the County or the District has requested and obtained a waiver from the United States Environmental Protection Agency pertaining to the Project or (ii) the Authority has otherwise advised the County and the District in writing that the American Iron and Steel Requirement is not applicable to the Project.
- C. The District shall comply with all record keeping and reporting requirements under the Federal Act (as hereinafter defined), including any reports required by a Federal agency or the Authority such as performance indicators of program deliverables, information on costs and project progress. The District understands and agrees that each contract and subcontract related to the Project is subject to audit by appropriate federal and state entities. The District shall at all times keep proper books of record and account in accordance with the "Uniform System of Accounts" established by the Commonwealth of Kentucky (the "Commonwealth"), in which complete and accurate entries shall be made of all its transactions relating to the System and which shall at all reasonable times be subject to the inspection of the Authority and the County.
- D. The District shall, upon completion of the Project, continuously operate and maintain the Project and shall not discontinue operations or dispose of the Project without the approval of the Authority and the County. The District shall continuously operate and maintain the Project and the System in accordance with applicable provisions of federal and state law and maintain adequate records relating to said operation; said records to be made available to the Authority and County upon their request at all reasonable times. The District shall keep the Project, including all appurtenances thereto, and the equipment and machinery therein, in good and sound repair and good operating condition at its own cost

so that the completed Project will continue to provide the services for which the System is designed.

- E. Within one hundred eighty (180) days after the end of each fiscal year of the District, the District shall provide to the County, itemized financial statements of income and expense and a balance sheet in reasonable detail, certified as accurate by a firm of independent certified public accountants or the Auditor of Public Accounts of the Commonwealth. All financial information must be satisfactory to the County as to form and content and be prepared in accordance with generally accepted accounting principles on a basis consistent with prior practice unless specifically noted thereon. With such financial statements, the District shall furnish to the County and the Authority a certificate stating that, to the best knowledge of the authorized representative signing such certificate, no default under this Memorandum exists on the date of such certificate, or if any such default shall then exist, describing such default with specificity. If the District expends \$750,000 or more in a year in Federal awards must have a single or program-specific audit conducted for that year in accordance with 2 CFR Part 200.
- F. The District will not apply any other federal funding to the Project in a manner that would cause the County or the District to receive "double benefits" as described in Section 603 of the Federal Act.
- G. The District agrees that it will at all times cause operation and maintenance of the Project to comply with the water quality standards, if any, established by any state or federal agency. The District agrees that it shall require qualified operating personnel properly certified by the Commonwealth to be retained to operate the Project during the entire term of the Assistance Agreement. The District shall comply with all requirements of the Water Quality Act of 1987, 33 U.S.C. § 1251 *et. seq.* (the "Federal Act") which may arise from time to time in order to in order to enable the County to assure compliance with the Federal Act, and with the agreements of the Authority set forth in the Capitalization Grant Operating Agreement between the Authority and the U.S. Environmental Protection Agency dated as of March 1, 1990 (the "Federal Agreement"), including but not limited to the following:
 - (i) The District shall provide all information requested of the District by the Authority or the County so that (i) the Grants Information Control System, referred to in the Federal Agreement, can be maintained, (ii) the accounting and auditing procedures required by Sections 603 and 606 of the Federal Act can be maintained and (iii) the Authority can furnish the information required of it under the Federal Agreement.
 - (ii) Qualified operating personnel, properly certified by the Energy and Environment Cabinet of the Commonwealth (the "Cabinet"), shall be retained by the District to operate the Project during the entire term of this Assistance Agreement. An approved plan of operating and an operations and maintenance manual for the Project shall be provided by the District on its behalf to the County, the Cabinet and the Authority. The Project shall be operated and maintained in an efficient and effective manner.

(iii) All residents in the service area of the Project must be offered the same opportunity to become users of the Project regardless of race, creed, color, or level of income.

(iv) If applicable, the District shall comply with provisions contained in the following federal regulations, orders, acts and circulars and the following statutes and regulations of the Commonwealth.

(a) Federal:

- (1) 49 CFR, Part 24, Implementing the Uniform Relocation Assistance and Real Properties Acquisition Policies Act of 1970
- (2) 40 CFR 35.3140 (And Appendix A to Subpart K) – NEPA-Like State Environmental Review Process
- (3) 40 CFR, Part 15, Administration of Clean Water Act with respect to grants and loans
- (4) 40 CFR, Part 7, 8, and 12, Nondiscrimination and Equal Employment Opportunity Act
- (5) 40 CFR, Part 29, Intergovernmental Review
- (6) 40 CFR, Part 32, Debarment and Suspension
- (7) Executive Order 11246, as amended, 11625 and 12138
- (8) Title VI of the Civil Rights Act of 1964, as amended
- (9) Age Discrimination Act
- (10) Rehabilitation Act of 1973
- (11) Contract Work Hours and Safety Standards Act

(b) State:

- (1) KRS 224
- (2) KRS 224A.111 Federally Assisted Wastewater Revolving Fund
- (3) KRS Chapter 337, Labor Laws
- (4) 401 KAR Chapter 5

H. The District acknowledges and agrees that upon the occurrence of an Event of Default (as defined in the Assistance Agreement), and upon the filing of a suit or other commencement of judicial proceedings to enforce the rights of the Authority under the Assistance Agreement, the Authority shall be entitled, as a matter of right, to the appointment of a receiver or receivers of the System and all receipts therefrom, pending such proceedings, with such power as the court making such appointment shall confer. The District further acknowledges to the County and the Authority its understanding of the provisions of Chapter 224A of the Kentucky Revised Statutes (the "Act"), vesting in the Authority certain powers, rights and privileges in respect of the Project upon the occurrence of an Event of Default under the Assistance Agreement, and the District hereby covenants and agrees that if the Authority should in the future have recourse to said rights and powers, the District shall take no action of any nature whatsoever calculated to inhibit, nullify, void, delay or render nugatory such actions of the Authority in the due and prompt implementation of the Assistance Agreement

- I. The District has or will obtain all licenses, permits and other governmental approvals (including but not limited to all required approvals of the Kentucky Public Service Commission) to own, occupy, operate and maintain the Project and to charge and collect rates and charges (“Service Charges”) for the services afforded by the System.
- J. The District hereby irrevocably covenants and agrees with the County that it will, to the maximum extent permitted by Kentucky law, mandatorily require the connection to and use of, the sanitary sewers constituting the Project by all persons owning, renting or occupying premises generating pollutants where such sanitary sewers are reasonably available to such premises, and to exhaust, at the expense of the District, all remedies for the collection of Service Charges, including, either directly or indirectly, pursuant to authority of the Act, causing termination of water services to any premises where the bill for sewer services is delinquent and foreclosure and decretal sale in respect of improvement benefit assessments which are delinquent.

SECTION 3 - MUTUALITY OF OBLIGATIONS

- A. The parties agree that the funds granted by the Authority to the County are to be used solely for the purposes of implementing the Project. Further the parties agree that the obligations imposed upon them are for their respective benefit and the timely fulfillment of each and every obligation in accordance with this memorandum is necessary. The failure of either party to fulfill its obligations under this memorandum or the failure of any action to occur by a date established by this memorandum shall constitute a breach of same and constitute default unless the fulfillment of such obligation is waived or modified by written agreement of the parties.
- B. In the event of default by the District, including the failure to take actions directed herein and/or to comply with time deadlines set out in this Memorandum, the County may declare this Memorandum void from the beginning without further obligation to the County to the District and the County may commence appropriate legal action to enforce its rights under this Memorandum.
- C. Except as may otherwise be provided herein, the parties to this Memorandum shall be solely responsible for any costs incurred in fulfilling their respective obligations under this memorandum and neither party shall have any claim against the other party for reimbursement of costs whether or not a party is in default.

SECTION 4 - TERM OF MEMORANDUM

- A. This Memorandum shall be effective as of the date first written above and shall terminate upon the 1st day of October, 2038, unless extended by the parties.
- B. This Memorandum may be terminated by either party at any time for cause and may be terminated by the County without cause on 30 days written notice.

SECTION 5 – AUTHORITY IS THIRD PARTY BENEFICIARY

The Authority is expressly made a Third Party Beneficiary to this Memorandum and may, to the fullest extent provided and permitted by law, by legal action, mandamus, suit in equity,

demand for specific performance, or otherwise, enforce this Memorandum and any and all other contracts and agreements in respect of the Project.

SECTION 6 - MISCELLANEOUS PROVISIONS

- A. This Memorandum shall be executed in two or more counterparts each of which shall be deemed an original, and it shall not be necessary in making proof of this Memorandum or the terms and conditions hereof to produce or account for more than one of such counterparts.
- B. The headings set forth in this Memorandum are only for convenience or reference and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Memorandum.
- C. The terms and conditions of this Memorandum shall be binding upon and shall inure to the benefit of the successor and assigns, respectively, of the parties. This provision shall not be construed to permit assignment by any party of any of its rights and duties under this Memorandum, which assignment shall be prohibited except with the prior written consent of the parties hereto and the Authority.
- D. This Memorandum 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.
- E. The parties agree that any suit, action or proceeding with respect to this Memorandum may only be brought into or entered by, as the case may be, the courts of the Commonwealth of Kentucky situated in Frankfort, Franklin County, Kentucky or the United States District Court for the Western District of Kentucky, Paducah Division.
- F. All notices, requests, demands, waivers, and other communications given as provided in this Memorandum shall be in writing, and shall be addressed as follows:

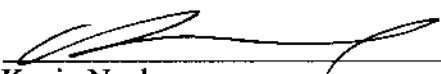
If to the Authority: Kentucky Infrastructure Authority
1024 Capital Center Drive, Suite 340
Frankfort, Kentucky 40601
ATTENTION: Executive Director

If to the County: Marshall County Fiscal Court
1101 Main Street
Benton, Kentucky 42025
ATTENTION: Judge-Executive


If to the District: Marshall County Sanitation District
P.O. Box 432
Benton, Kentucky 42025
ATTENTION: Chairman

IN WITNESS WHEREOF, the County of Marshall, Kentucky and the Marshall County Sanitation District have executed this Memorandum as of the date first above written.

COUNTY OF MARSHALL, KENTUCKY

By: 
Name: Kevin Neal
Title: Judge/Executive

MARSHALL COUNTY SANITATION DISTRICT

By: 
Name:
Title: Chairman

ACKNOWLEDGEMENT AND AGREEMENT

The undersigned, a duly authorized representative of the Kentucky Infrastructure Authority, as third party beneficiary under the foregoing Memorandum of Agreement, hereby acknowledges and agrees to the terms of the Memorandum of Agreement.

KENTUCKY INFRASTRUCTURE AUTHORITY

By: _____
Title: _____

EXHIBIT A

[Copy of Assistance Agreement)

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