

**DEVELOPER INSTALLED WATER MAIN EXTENSION
REFUNDING AGREEMENT**

This Developer Installed Water Main Extension Refunding Agreement (hereinafter "Agreement") is made by and between

**Jefferson County Public Schools
3001 Crittenden Dr
Louisville, KY 40209**

"DEVELOPER"

and

**LOUISVILLE WATER COMPANY
A Municipally-owned Corporation
550 South Third Street
Louisville, Kentucky 40202**

"LOUISVILLE WATER"

effective this 24th day of MARCH, 2021 (hereinafter the "Effective Date").

WITNESSETH

WHEREAS, Developer is presently making improvements to certain real estate located within Louisville Water's service area to be developed as [New Dixie Corridor Elementary School], (hereinafter referred to as the "Development"); and

WHEREAS, in order to facilitate the construction of the Development, Developer desires to construct and install new water main facilities and related appurtenances necessary to extend water distribution (hereinafter referred to as the "Water Facilities"), as summarized in Section 2, throughout the Development.

WHEREAS upon completion of the Water Facilities by Developer, the Water Facilities will become a part of Louisville Water's water service distribution system; and

WHEREAS, Louisville Water is agreeable to incorporating the Water Facilities into its water service distribution system provided that such Water Facilities are designed and installed in accordance with Louisville Water's specifications, its Service Rules and Regulations and according to all other applicable laws and regulations.

NOW THEREFORE, in consideration of the terms and conditions set forth below, the receipt and sufficiency of which are hereby acknowledged, Developer and Louisville Water agree as follows:

1. Definitions.

The following Definitions apply to this Agreement:

- A. "Active Domestic Water Services" shall mean domestic water services physically connected to the Water Facilities for which Louisville Water bills a customer for a minimum bill as defined in Louisville Water's Tariff, Rate Schedule and Customer Fees and Charges in effect as of the date of this Agreement.
- B. "Developer Plans and Data" shall mean those engineering plans and other project documentation created by or on behalf of the Developer as reasonably requested by Louisville Water for purposes of facilitating the completion and design of the Water Facilities.
- C. "Formal Acceptance" shall mean the act whereby Louisville Water formally accepts the Water Facilities into its waterworks system as set forth Section 14 below.
- D. "Installation Cost Summary" shall mean a listing of the costs for installation labor and materials incurred in the construction of the Water Facilities. Installation Cost Summary shall be set forth on the form attached hereto as Exhibit A.
- E. "Water Delivery Materials" shall mean materials such as water pipe, pipe fittings, valves, hydrants and related appurtenances as designated in Section 3 of this Agreement that are furnished by the Developer and are directly affecting and/or are connected to the Water Facilities.
- F. "Water Facilities Plans and Specifications" shall mean those engineering plans and technical specifications designed and prepared by or on behalf of Louisville Water for construction of the Water Facilities.

G. "Service Sleeves" shall mean pipes, conduits or tubular conveyances with sufficient size, structural strength, depth, and street crossing placement to allow for ¾-inch or 1-inch copper tubing to be inserted through to provide water to a water service meter vault.

H. "Developer Required Deposit" is the sum of the estimated cost (as calculated according to Section 7 below) for Louisville Water's engineering and inspection of the Water Facilities less any Betterment.

I. "Betterment" in the event Louisville Water elects (as further defined in Section 6) below to require Developer to install a water main larger than the size necessary to serve the Development, shall mean the incremental cost of Water Facilities in excess of the cost of Water Facilities necessary to serve the Development that are incurred by Developer in order to upsize the water main to the size specified by Louisville Water ("upsizing").

J. "Total Development Cost" shall mean the actual sum of Louisville Water's labor costs incurred in engineering the Water Facilities Plans and Specifications (plus amendments if necessary) and inspection of the Water Facilities minus any Betterment, if applicable.

2. Plans and Specifications.

A. Developer shall submit to Louisville Water the Developer Plans and Data for review by Louisville Water. Relying upon the Developer Plans and Data, Louisville Water will design the Water Facilities in accord with *Louisville Water's Technical Specifications and Standard Drawings for Pipeline Construction* (then in effect as of the Effective Date of this Agreement). Thereafter, Louisville Water will prepare Water Facility Plans and Specifications and provide one copy to Developer no more than thirty (30) days following Developer's payment of the Developer's Required Deposit to Louisville Water. Louisville Water may amend the Water Facility Plans and Specifications as reasonably necessary.

B. Developer is fully and solely responsible for the accuracy of the Developer Plans and Data submitted to Louisville Water. Louisville Water has and assumes no obligation to verify the accuracy of Developer's Plans and Data.

C. Developer shall furnish, construct and install the Water Facilities in accordance with the Water Facility Plans and Specifications.

D. The Water Facilities scope for the Development is summarized as follows: **Furnish and install 1,085+/- LF of 8" AWWA C900 DR18 PVC water pipe, three (3) fire hydrants, and appurtenances.**

3. Water Delivery Materials.

Prior to beginning of construction of the Water Facilities, Developer shall submit five (5) copies of shop drawings or manufacture's literature showing the type, size and specifications of the Water Delivery Materials for Louisville Water's review and approval. Louisville Water will provide the Developer with reviewed shop drawings within two weeks (14 days) after Louisville Water receives the foregoing information defining the Water Delivery Materials. The Water Delivery Material shall not be installed until shop drawings have been approved and the inspector is given adequate time to field verify that the Water Delivery Materials on the job site comply with the approved shop drawings. All Water Delivery Materials supplied by Developer for the Project shall comply with *Louisville Water Material Specifications* (then in effect as of the Effective Date of this Agreement). All Water Delivery Materials shall also be of the type and classification as specified on the Water Facility Plans where indicated. Developer shall be responsible for all costs for all such Water Delivery Materials, including, but not limited to pipe, fittings, valves, fire hydrants and appurtenances that are rejected by Louisville Water, and for all warranties and representations, express or implied, supplied by Developer or third parties in connection with such Water Delivery Materials.

4. Developer Installed Service Sleeve.

Developer has the option to furnish and install 2" Schedule 40 PVC service sleeves to provide for future water service to residential lots located across the roadway from the adjacent water main.

Developer shall:

- A. Locate and show all proposed service sleeves on Developer's Plan and Data for the Development;
- B. Furnish and install the service sleeves, capped at each end, in accordance with *Louisville Water's Service Sleeve Technical Specifications and Standard Drawing* details, including specified field markings;
- C. Field mark the buried service sleeve ends with a 2" or larger PVC pipe installed vertically 6-inches above finish grade and extending below finish grade to the end of the service sleeve. The field mark PVC pipe shall be painted blue on the exposed end of the pipe and shall be installed at both ends of each service sleeve. A 12 AWG copper tracing wire shall be routed through the service sleeve and attached to the field marking pipe to aid in locating the service sleeve in the future.

Developer shall notify Louisville Water's designated Inspector of the location of any installed service sleeves. Louisville Water's Inspector will verify the location of service sleeves and obtain as-built measurements. Louisville Water will reimburse the Developer in the amount of \$225 in the form of an installation credit for each service sleeve installed in accordance with this section upon Formal Acceptance. Developer shall be responsible for maintaining the service sleeve, including field markings, until it is used to supply future residential service.

- D. In the event that the service sleeve is not usable at the time Louisville Water installs the service, the Developer shall pay Louisville Water's cost for finish pavement, curb and sidewalk restoration associated with installing the service by open cut excavation in the road.

5. Service Installation Connections.

Jefferson County Public Schools, Re:Project Name - New Dixie Corridor Elementary School -
Louisville Water Project Number 16130

In the event Developer elects to undertake service installation connections such connections shall be installed in accord with *Louisville Water Technical Specifications and Standard Drawings for Pipeline Construction* as in effect at the time of the installation. Developer shall ensure that finished grade has been established, plus or minus three (3) inches, in all areas of proposed water main and service installation Developer shall use a Louisville Water prequalified contractor for the installation of the applicable category materials and/or type of service installation connection(s). Once a Developer Installed Water Main Extension Refunding Agreement has been executed, the Developer shall complete and submit an application for service within thirty (30) days of the Effective Date of the Agreement to the Louisville Water New Service Applications Department for each service to be installed with the water main extension project. Developer shall make payment when submitting the new service application(s) for any associated fees and or charges, including the System Development Charge for each service.

6. Betterment.

Louisville Water may elect to have the Developer install a water main of larger size than is required for service to the Development. In the event that Louisville Water elects to do so, the total project cost utilized in computing Developer's Required Deposit and Total Development Cost shall be on the basis of the size water main required for service to the Development with the following conditions:

A. Betterment for Water Mains Up to and Including 12 Inches in Diameter:

Louisville Water will bear the incremental cost of materials directly related and in excess of the size water main required for service to the Development. The Developer will bear the incremental cost for installation labor, and rock excavation associated with upsizing the mains up

to and including 12 inches in diameter water mains. All materials costs shall be determined using unit pricing from the Louisville Water warehouse.

B. Betterment for Water Mains Larger Than 12 inches in Diameter:

For mains being upsized to larger than 12 inches in diameter, Louisville Water will bear the incremental cost of material, installation labor, and rock excavation associated with upsizing the water main to a size greater than that required for service to the Development. All materials costs shall be determined using unit pricing from the Louisville Water warehouse.

If applicable, the following tables outline the Betterment estimate for this project:

MATERIALS COST

	Casing Pipe & Insulators	Water Main & Appurtenances	Material Total
Developer Portion			
Louisville Water Portion			
Total			

INSTALLATION LABOR COST

	Install Casing Pipe & Insulators	Install Water Main & Appurtenances	Install Labor Total
Developer Portion			
Louisville Water Portion			
Total			

COST SUMMARY

	Total Material	Total Install Labor	Louisville Water Engineering & Inspection	Total
Developer Portion				
Louisville Water Portion				
Total				

If there is an increase or decrease of pipe footages from the preliminary estimate to the actual installed pipe footage, then the difference will be calculated using the same unit pricing obtained from the Louisville Water warehouse.

Any Betterment cost for pipe and other materials (appurtenances), fittings, valves, etc. shall be finalized and calculated at Formal Acceptance. Louisville Water's warehouse unit prices in effect on the date the Water Facilities are Formerly Accepted by Louisville Water will be used to determine the Betterment cost total.

7. Developer's Required Deposit.

The Developer's Required Deposit is the sum of the estimated cost of Louisville Water's Engineering and Inspection Cost minus, if applicable, Louisville Water's estimated portion of Betterment identified in Section 6, and is calculated as follows:

I. Louisville Water's Engineering and Inspection Cost	\$18,445.00
II. Betterment	\$-0.00
Developer's Required Deposit (Sum of items I & II)	\$18,445.00

The Developer's Required Deposit, as calculated above, shall be delivered to Louisville Water in the form of a cashier's check or an irrevocable letter of credit issued by a financial institution appearing on the list of financial institutions approved by Louisville Water and in a form acceptable to Louisville Water.

8. Other Costs and Materials.

Developer shall provide at its expense and without cost to Louisville Water all materials and any and all equipment, tools, apparatus, labor and expertise necessary to construct the Water Facilities to the satisfaction of Louisville Water.

9. Water Main Installation Contractor.

Developer shall employ a water main installation Contractor who is currently prequalified with Louisville Water for pipeline construction and whose prequalification amount exceeds the installation cost and value of the Water Facilities. The Contractor will perform, with its own organization and employees, work amounting to no less than fifty percent (50%) of the labor required for the Project.

10. Water Service Installation Contractor.

If the Developer chooses to install water services as part of or in connection with the construction and installation of the Water Facilities, then Developer shall employ a water service installation contractor that is currently prequalified with Louisville Water for the service installation category to be installed. The Contractor will perform, with its own organization and employees, work amounting to no less than fifty percent (50%) of the labor required for the Project.

11. Commencement of Construction, Payment Schedule, and Coordination of Construction Schedule.

A. Prerequisites to Commencement of Construction and Payment Schedule. Developer shall commence construction only after Developer has received Louisville Water's written authorization to proceed and has:

- (1a) paid Louisville Water by cashier check 100% of the estimated Developer's Required Deposit OR
- (1b) authorized Louisville Water's withdrawal of fifty percent (50%) of Developer's Letter of Credit pursuant to Section 7 of this Agreement. If the Developer is paying via a Letter of Credit, the remaining fifty percent (50%) of the amount due under such Letter of Credit shall be withdrawn either upon Formal Acceptance or immediately prior to expiration of the Letter of Credit if the existing Letter of Credit is not being replaced in an amount to cover the remaining balance, whichever occurs first; and

- (2) Developer has submitted material shop drawings, has received approved shop drawings from Louisville Water, and the Louisville Water Inspector has inspected the materials on-site to confirm their compliance with the shop drawings; and
- (3) once the Developer wishes to proceed with construction, the Developer shall notify Louisville Water and give Louisville Water a minimum of two weeks (14 days) to obtain state and/or local right-of-way encroachment permits on behalf of the Developer, if applicable.

B. Developer shall coordinate its construction schedule with Louisville Water so that Louisville Water has an opportunity to have sufficient inspection coverage of the construction of the Water Facilities that Louisville Water deems reasonably necessary.

12. Inspection.

Louisville Water's inspectors and engineers shall have free and unrestricted access to work being performed on the Water Facilities and shall have the authority to order any defective or unapproved material removed and replaced. Developer shall repair or reconstruct any defective workmanship or any workmanship not in conformity with Louisville Water's *Material Specifications and Technical Specifications and Standard Drawings for Pipeline Construction* at Developer's cost. Developer shall prohibit its Contractor from backfilling any portion of the water main trench before Louisville Water's inspectors have been given the opportunity to inspect and approve the work.

13. Transfer of Title to Louisville Water.

Developer represents and warrants that it will transfer all right, title and interest in and to the Water Facilities and any appurtenances related thereto shall vest in Louisville Water upon Louisville Water's Formal Acceptance of the Water Facilities. Developer shall execute a transfer document to Louisville Water, substantially in the form attached hereto as EXHIBIT B.

14. Acceptance of Project; Formal Acceptance.

Developer assumes all liability, monetary or otherwise, for the Project until Formal Acceptance by Louisville Water. Formal Acceptance shall not occur until the Developer satisfies, in the sole but reasonable determination of Louisville Water, the following prerequisites:

- A. Water Facilities installed according to the Water Facilities Plans and Specifications;
- B. Water Facilities passes Pressure Testing;
- C. Water Facilities passes Water Quality Testing;
- D. Requested Easements Granted to Louisville Water in a form acceptable to Louisville Water;
- E. Title to Water Facilities is Transferred to Louisville Water by execution of Exhibit B attached hereto;
- F. Developer Installed Material and Labor Cost Summary provided to Louisville Water; and,
- G. Record Plat of the area serviced by the Water Facilities, as described in Section 20 herein, recorded with the appropriate county clerk's office.

Within twenty-one (21) days of satisfactory completion of all prerequisites stated above, Louisville Water will formally advise Developer in writing of Louisville Water's Formal Acceptance. Within one hundred twenty (120) days of Formal Acceptance, Louisville Water shall issue a refund of Developers Required Deposit in excess of Total Development Cost or Louisville Water will invoice Developer for the Total Development Cost in excess of the Developer's Required Deposit, whichever applies. Developer agrees to pay such invoice, if applicable, in full within thirty (30) calendar days from the date the invoice is issued by Louisville Water.

15. Developer's Warranty.

- A. Developer hereby expressly warrants that all work performed by or on behalf of Developer on the Water Facilities will be of good quality, according to industry standards and free from defects in workmanship for a period of one (1) year from the date of Formal Acceptance. All Water

Delivery Materials shall be free from defects for a period of one (1) year from the date of Formal Acceptance. The warranty stated herein shall be in addition to all other warranties, implied or express available pursuant to applicable law.

B. One (1) Year Warranty Inspection. Louisville Water shall perform an inspection of the Water Facilities one (1) year after Formal Acceptance. The Louisville Water Inspector will notify the Developer of any deficiencies identified. Upon written notification, the Developer will have thirty (30) days from the date of notification to correct deficiencies. If Developer does not correct the deficiencies within the specified time, Louisville Water may correct the deficiencies and bill the Developer for any work performed, including for labor, equipment and any materials supplied. Developer agrees to make payment in full of all costs and expenses associated with correcting the deficiencies within thirty (30) calendar days from the date Louisville Water invoices the Developer.

16. Louisville Water Tariff.

Developer understands and agrees that the properties served by the Water Facilities will be subject to Louisville Water's tariff, including, but not limited to, Louisville Water's System Development Charge, charges for property service connections to the Water Facilities, and Louisville Water's customer water rates, as such charges and/or rates are established and/or adjusted from time to time by the Louisville Board of Water Works. A copy of Louisville Water's tariff is available from Louisville Water upon request or may otherwise be located at www.louisvillewater.com.

17. Louisville Water Facilities Relocation.

Developer agrees to be responsible for any relocation of the existing water main and related facilities, pursuant to a Louisville Water Relocation Agreement if relocation of any existing Louisville Water facilities is necessary as a result of Developer's actions or in order to complete construction and installation of the Water Facilities.

18. Failure to Complete Project.

Developer shall have no claim against Louisville Water if it fails to complete construction of the Water Facilities. Developer waives all claims and demands against Louisville Water for the work completed and the materials installed in connection with the Water Facilities. Louisville Water shall have the right, but not the obligation, at its sole option, to take control and ownership of any work partially completed in order to complete construction of the Water Facilities.

19. Indemnification.

Developer hereby covenants and agrees to defend, indemnify and hold harmless Louisville Water, its shareholders, officers, directors, agents and employees, from and against any and all liabilities, claims, losses, damages, expenses (including attorney fees and court costs), or other penalties of whatever nature that may arise in any manner, whether directly or indirectly, from and out of all activities, acts, omissions of neglect and/or intentional acts of Developer and/or its agents, servants, employees, contractor(s), subcontractors and/or materialmen, or anyone else acting for and on behalf of the Developer, in connection with the performance of any aspect of this Agreement. Developer further agrees to defend, indemnify and hold Louisville Water harmless from any mechanic's/materialmen's liens or other liens that may at any time arise as a result of the performance of this Agreement or the construction and installation of the Water Facilities and/or the rendering of any service or the furnishing of any materials in connection with this Agreement.

20. Right of Way/Easements.

Developer represents, covenants and agrees that all aspects of the Water Facilities and related appurtenances installed pursuant to this Agreement shall be installed within a public right of way or in a publicly dedicated water main easement and other easements as deemed reasonably necessary by Louisville Water. Developer retains the sole responsibility, and Louisville Water retains the right to require the Developer, to procure and provide to Louisville Water, at Developer's sole cost and expense any and all easements specified herein including, but not limited to, those easements deemed reasonably necessary as a result of changes and/or modification of the

design due to engineering and/or field construction conditions or as identified by Louisville Water for completion of the Water Facilities prior to Formal Acceptance. Developer shall cause the following Reservation of Water Main Easement to be placed upon and incorporated into the Record Plat to provide for any future extension and installation of water facilities and appurtenances by Louisville Water as solely identified by Louisville Water.

RESERVATION OF WATER MAIN EASEMENT

Permanent easement(s) for water mains and appurtenances are hereby reserved on, over, under and through the strip(s) of land as defined and bounded by dashed lines marked "Louisville Water Company Easement" together with the right of ingress and egress over all lots to and from the easement(s) for constructing, repairing, removing, replacing, relocating, reconstructing, maintaining and enlarging of water mains. No permanent structure of any kind shall be erected or the grade of the surface of the land changed within the said easement(s) without written consent of Louisville Water Company. Fences, pavement, shrubbery, and gardens are permissible to occupy an easement area at the owner's risk. Should any such permissible improvements be removed due to Louisville Water Company's actions in constructing, repairing, removing, replacing, relocating, rehabilitating, reconstructing, maintaining or enlarging the water mains, Louisville Water Company will make reasonable efforts to replace plantings, pavement and fencing with similar, like kind or equivalent items that are commercially available, provided the replacement is feasible. Temporary rights are hereby reserved to use land adjacent to the permanent easement(s) herein granted for storage and movement of excavated earth, rock, construction materials, tools, and equipment during construction of said water lines.

Louisville Water shall issue a Record Plat approval letter for the Developer to file the Record Plat upon receipt and approval by Louisville Water of: 1) Developer Plans and Data approved by the appropriate government agencies, 2) completed water main extension design(s), and 3) preliminary plat.

21. Compliance With Law and Restrictions.

Developer shall comply with any and all restrictions or conditions contained in any deeds, permits or licenses, and will comply with all applicable law and regulations, including, but not limited to, applicable environmental, construction, safety and health law and regulations.

22. Environmental Matters.

Notwithstanding any other provision of this Agreement, Developer assumes all responsibility for and shall defend, indemnify and hold harmless Louisville Water, its shareholders, officers, directors, agents, servants and/or employees from all claims, liabilities, fines, penalties, costs and expenses, including attorney fees, incurred by Louisville Water and/or its officers, directors, agents, servants or employees as a consequence of any sudden or non-sudden pollution or contamination of air, water, land and/or ground water arising from or in connection with performance of this Agreement and/or the construction and installation of the Water Facilities and/or any claim, liability, violation or penalty arising under federal or state law dealing with either such sudden or non-sudden pollution of air, water, land and/or ground water arising from the performance of this Agreement and/or the construction and installation of the Water Facilities or to remedy of any alleged or actual claim, liability, violation or penalty related to or arising from the foregoing.

23. Assignment.

Developer shall not assign this Agreement to any third party, including a subsidiary of or affiliated entity associated with Developer, prior to Formal Acceptance of the Project by Louisville Water, without Louisville Water's written consent to the assignment.

24. Installation Cost Summary.

Prior to Louisville Water's Formal Acceptance of the Project, Developer will provide Louisville Water with a "Installation Cost Summary" (Exhibit A). If the Developer Installation Cost Summary is not submitted to Louisville Water, then Developer shall submit copies of receipts, contracts, canceled checks and other documentation in order that Louisville Water may reasonably determine Developer's total water main extension costs incurred for the Project. Developer's failure to provide adequate documentation of these costs shall prohibit or limit its refunding rights under Sections 26(A) and 26(B).

25. Developer Refunding Options Summary.

For single family residential developments, the "Up-Front Refunding" method in Section 26A shall be utilized. For all developments other than single family residential, the developer has the option of either the "Up-Front Refunding" or the "Two Year Anniversary Refunding." For all developments other than single family residential developments, if the number and size of Active Domestic Water Services are known then "Up-Front Refunding" method should be utilized. Up-Front Refunding allows the refund to be issued soon after Formal Acceptance and is based upon a projected ninety percent (90%) of the total proposed Active Domestic Water Services and the service sizes being included in the refunding calculation.

For all developments other than single family residential developments, if the number and/or size of Active Domestic Water Services are unknown, then the "Two Year Anniversary Refunding" method in Section 26B must be utilized. Two Year Anniversary Refunding allows the refund to be calculated and issued 2-years after Formal Acceptance. This refund is based on the number and size of actual Active Domestic Water Services at the two (2) year anniversary of Formal Acceptance.

26. Developer Refunding Options:

Developer shall choose, based on the criteria set forth in Section 25, Refunding Option A – Up-Front Funding, or Refunding Option B – Two Year Anniversary Refunding. Developer shall check and initial only one of the two options in Section 26 – A or B.

☒ ____ (initials) A. Up-Front Refunding - Refund for Single Family Residential Developments, Projects Utilizing 5/8 x 3/4" Services or with Confirmed Sizing for Larger Services. After Formal Acceptance, the Company shall refund to the Developer the present value for 5/8 x 3/4" Active Domestic Water Services projected at the ten-year anniversary of Formal Acceptance of the Project. Refunds for projected Active Domestic Water Services larger than 5/8 x 3/4" are based upon the equivalent unit of the service size as compared to the 5/8 x 3/4" and must be based on final construction plans of the development, stamped by a licensed

engineer, showing the building design and size of the water service on the Effective Date of the Agreement. If the construction plans are not finalized and/or the size(s) of the water service(s) larger than 5/8 x 3/4" are not defined on the Effective Date of the Agreement the refunding method shall follow the procedure outlined in Section 26(B) of the Agreement.

1. Refund Schedule. The refund amount shall be determined by the amounts shown on the table below, based on the billing size of the Active Domestic Water Services:

<u>Billing Service Size</u>	<u>Annual Refund Amount</u>
5/8" x 3/4"	\$ 26.50
1"	\$ 44.00
1 1/2"	\$ 88.00
2"	\$ 141.00
3"	\$ 276.00
4"	\$ 442.00
6"	\$ 883.00

2. Refunding Period. Refunds shall be made one time within 120 days after Formal Acceptance of the Water Facilities. The period used in calculating the duration for which refunding applies in the refunding calculation shall be ten (10) years.

3. Refunding Calculation. The refunding calculation assumes that ninety percent (90%) of building lots will have Active Domestic Water Services upon the ten (10) year anniversary of Formal Acceptance. The build-out projection shall be fifteen percent (15%) by the end of year 1 and shall increase an incremental fifteen percent (15%) by the end of each subsequent year through year 5; i.e., seventy-five percent (75%) of lots will have Active Domestic Water Services on the 5th anniversary of Formal Acceptance. By the end of years 6-10, it is assumed that an incremental three percent (3%) of lots per year will have Active Domestic Water Services, thereby resulting in ninety percent (90%) of all lots having Active Domestic Water

Services by the end of year 10. The Developer's refund amount shall be calculated based on the present value of the sum of the annual refund amounts. An annual discount rate of five percent (5%) will be used in the computation.

Louisville Water shall calculate the refund according to the following present value formula:

$$\text{Refund} = (A \times N_1) + (A \times N_2) / (1+i)^{n2-1} + (A \times N_3) / (1+i)^{n3-1} \dots (A \times N_{10}) / (1+i)^{n10-1}$$

A = Applicable Annual Refund Amount per Section 26(A)(1)

N = Number of Projected Active Domestic Water Services by Size by end of Year 1-10

n = Year 1-10

i = Annual Discount Rate

4. Fulfillment of Refunding Obligation. Upon payment of the refund to the Developer, the Company's full refunding obligation to the Developer shall be deemed to have been fulfilled. In no event shall the refund be greater than the total cost of the water main extension, without interest. Service installation costs shall not be included in determining the cost of the main extension. Louisville Water has the right to offset any outstanding balance owed by Developer under the Agreement or in connection with the construction and installation of the Water Facilities against any Refund due the Developer.

☐ ____ (initials) B. Two Year Anniversary Refunding - Refund for Projects Utilizing Unconfirmed Size(s) of Services Greater than 5/8 x 3/4" or When Developer of a development other than a single-family residential development prefers refunding based on the Two (2) Year Anniversary Date. If final construction plans, stamped by a licensed engineer, indicating the size(s) of domestic water service(s) greater than 5/8 x 3/4" are not available on the Effective Date of the Agreement, or if the Developer prefers a refunding based on the Two (2) Year Anniversary Date, the refunding amount shall be based on the present value of each Active Domestic Water Service in accordance with the following:

1. Refund schedule. The refund amount shall be determined by the amounts shown on the table included in Section 26(A)(1), based on the billing size of each Active Domestic Water Service on the two (2) year anniversary date of Formal Acceptance.
2. Refunding Period – Refunds shall be made one time, within 120 days after the 2-year anniversary date of Formal Acceptance. The period used in calculating the duration for which the refunding applies in the refunding calculation shall be ten (10) years.
3. Refunding Calculation. The refund shall be calculated based on the sum of the present value of the annual refund amount of each Active Domestic Water Service on the 2-year anniversary of Formal Acceptance. The Developer refund shall be discounted for a ten-year period at an annual discount rate of five percent (5%).

The refunding calculation shall be performed in accordance with the following present value formula:

$$\text{Refund} = ((\Sigma(A \times N)) * [((1+i)^n - 1)/(i * (1+i)^n)])$$

A = Applicable Annual Refund Amount per Section 26(A)(1)

N = Number of Active Domestic Services by Size by end of Year 2

n = Refunding Period in Years (10)

i = Annual Discount Rate

4. Fulfillment of Refund Obligation. Upon payment of the refund to the Developer, the Company's full refunding obligation to the Developer shall be deemed to have been fulfilled. In no event shall the refund be greater than the total cost of the water main extension, without interest. Service installation costs will not be included in determining the cost of the main extension. Louisville Water has the right to offset any outstanding balance owed by Developer under the Agreement or in connection with the construction and installation of the Water Facilities against any Refund due the Developer.

27. Termination of Agreement.

Unless extended by mutual written agreement, this Agreement shall terminate eighteen (18) months from the Effective Date unless Developer has commenced construction after having paid Louisville Water for 100% of Developer's Required Deposit or after Louisville Water has drawn 50% of Developer's Letter Of Credit, whichever may be applicable. At the time of termination, Louisville Water shall be entitled to draw upon Developer's deposit or Letter Of Credit in the amount of any costs incurred by Louisville Water prior to termination, including any costs incurred for design and engineering work and any other costs and expenses incurred by Louisville Water with respect to this Agreement and/or the Project. Upon termination pursuant to this Section, Developer shall be entitled to a refund of its deposit to the extent the deposit exceeds Louisville Water's costs and/or to a return of its Letter Of Credit or the applicable unused portion thereof.

28. Permits.

Developer shall be responsible at its sole cost and expense for securing all permits deemed necessary to complete construction and installation of the Water Facilities and/or for performance of this Agreement; however, Louisville Water will assist in obtaining state and local right-of-way encroachment permits if sufficient notice is given as outlined in Section 11.

29. Applicable Law.

The construction and performance of this Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky and any action to enforce or challenge this Agreement shall be in the state courts of Jefferson County, Kentucky.

30. Waiver of Performance.

Failure to enforce any provision of this Agreement shall not constitute a waiver of any other provision or a future or continuing waiver of enforcement of the provision previously waived. Any holding of invalidity of any certain provision shall not affect the validity of the remaining paragraphs, sections, clauses and provisions hereof.

31. Binding Agreement; Assignment.

This Agreement shall inure to the benefit of and shall be binding upon the parties, their respective assigns, and successors in interest. Without the written consent of the other party to this Agreement, such consent not to be unreasonably withheld, neither Louisville Water nor Developer may assign this Agreement to a third party.

32. Entire Agreement/Modification.

This Agreement supersedes all previous agreements, oral or written, between Developer and Louisville Water with respect to the Development and/or the Project and represents the whole and entire contract between the parties regarding this subject matter. This Agreement may not be assigned, altered, modified, amended or rescinded except in writing properly executed by an authorized representative of Developer and Louisville Water.

(Remainder of Page Left Blank Intentionally)

IN WITNESS WHEREOF, the Parties by their signatures below represent and covenant that they have received the necessary approvals and have the authority to enter into the Agreement.

Jefferson County Public Schools

By: _____
Signature of Individual with Authority to Enter into Agreement

Name: _____
Written Name of Individual with Authority to Enter into Agreement

Title: _____

Date: _____

LOUISVILLE WATER COMPANY

Recommended for approval:

By: _____ Date: _____

Jeremy Raney, PE
Director of Engineering

Authorized for the Louisville Water Company:

By: _____ Date: _____

Timothy Kraus, PE
Vice President and Chief Engineer

Approved for Legality and Form:

By: _____ Date: _____

EXHIBIT A
DEVELOPER INSTALLED MATERIAL AND LABOR COST SUMMARY

Project Number: **16130**

Project Name: **New Dixie Corridor Elementary School**

Only include costs associated with the Water Main Installation (do not include grading cost, cost to install sewers or private water service lines, etc.).

Item	Length or Quantity	Material Unit Cost	Subtotal Material Cost	Labor Unit Cost	Subtotal Labor Cost	Total of Material and Labor Subtotals
16-Inch						
12-Inch						
8-Inch						
6-Inch						
4-Inch						
Hydrants						
Services (only from water Main to Meter)						
Totals						

TOTAL INSTALLED LABOR AND MATERIAL COST: \$ _____

Signature: _____

Date: _____

Title/Company: _____

EXHIBIT B

INSTRUMENT OF TRANSFER OF WATER MAIN EXTENSION FACILITIES

The undersigned, **Jefferson County Public Schools** the ("Developer") hereby assigns, sells and transfers to the LOUISVILLE WATER COMPANY, a municipally owned corporation, all of the recently installed water main extensions and accessories thereto, including, if applicable, property service connection facilities, installed under a certain developer water main extension refunding agreement between the Developer and the Louisville Water Company, dated as of the _____ day of _____, 20____, in the development known as **New Dixie Corridor Elementary School**, such main extensions and accessories thereto becoming a part of the Louisville Water Company's water service distribution system by reason of such agreement together with this transfer.

The Developer warrants that the cost of all labor and material with respect to such installation has been paid in full and that there are no liens or other claims, asserted or unasserted, against the main extension facilities being transferred herein or against Louisville Water Company related to this project. The Developer further warrants that the materials used in and the installation, itself, was in accordance with the Louisville Water Company plans and specifications in effect for this project.

WITNESS the signature of the developer this ____ day of _____, 20____.

Name of Developer

Witness: _____ By: _____
Signature of Individual with Authority to Make Transfer

Printed Name of Individual with Authority to Transfer