Budget and Finance Committee
Kevin Stinnett - Chair
Ed Lane – Vice Chair
Jim Gray
Linda Gorton
Chuck Ellinger
Andrea James
Tom Blues
Julian Beard
George Myers
Peggy Henson

AGENDA

BUDGET AND FINANCE COMMITTEE

October 26th, 2010

1:00 P. M.

1. Review and Discussion of FY 2010 Revenue for September, 2010 – Rumpke

   - PowerPoint Presentation - (pg 1-11)

2. Discussion on Default Remedies & MOU Relating to Bonding of the Eastern State Hospital – Rumpke

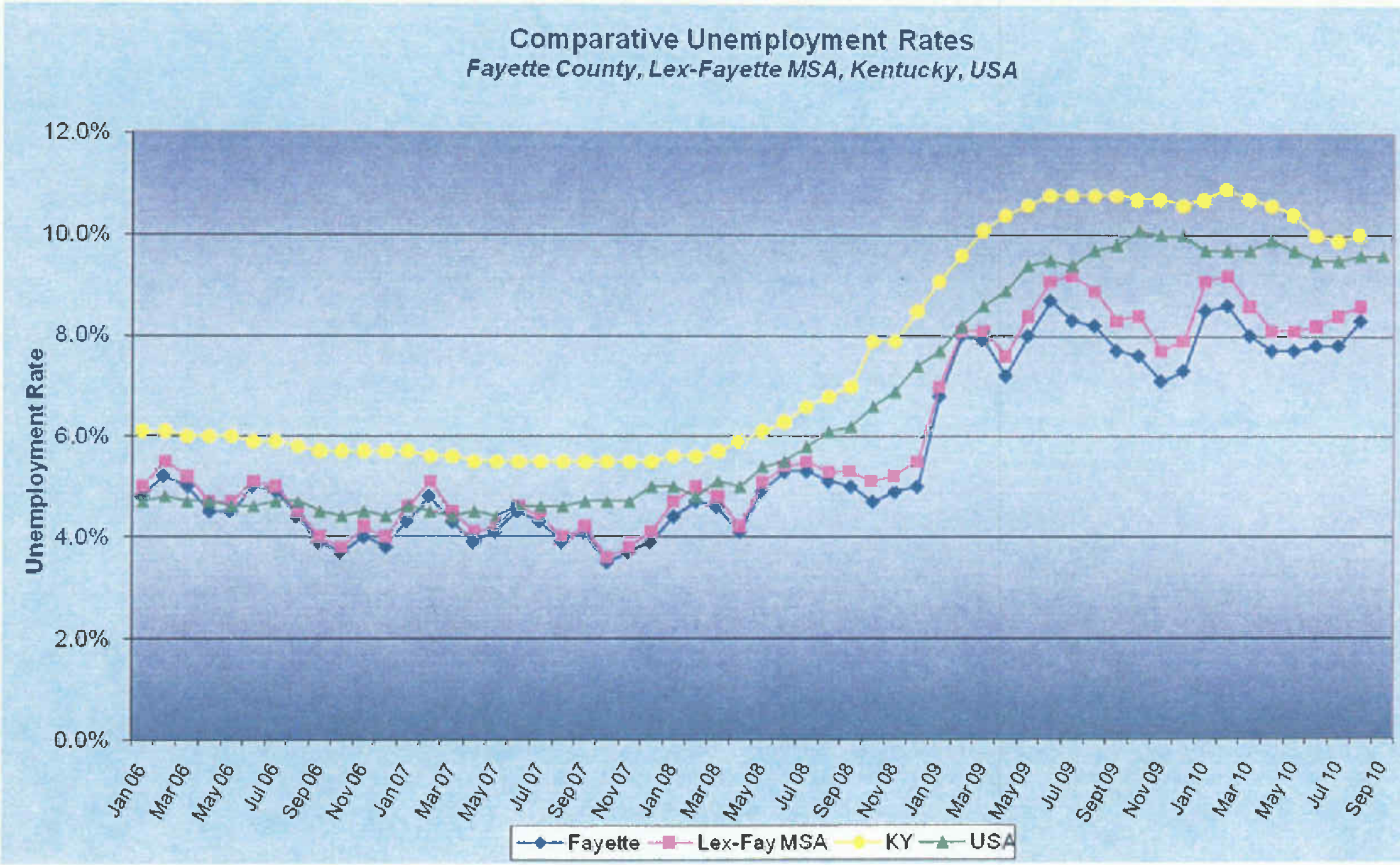
   - Eastern State Hospital Capital Funding Overview – (pg 12 – 17)
   - Memorandum of Understanding Between the State & LFUCG – (pg 18 – 28)
   - Supplement to the Memorandum of Understanding – (29 – 36)

3. Update on Debt Management Policy

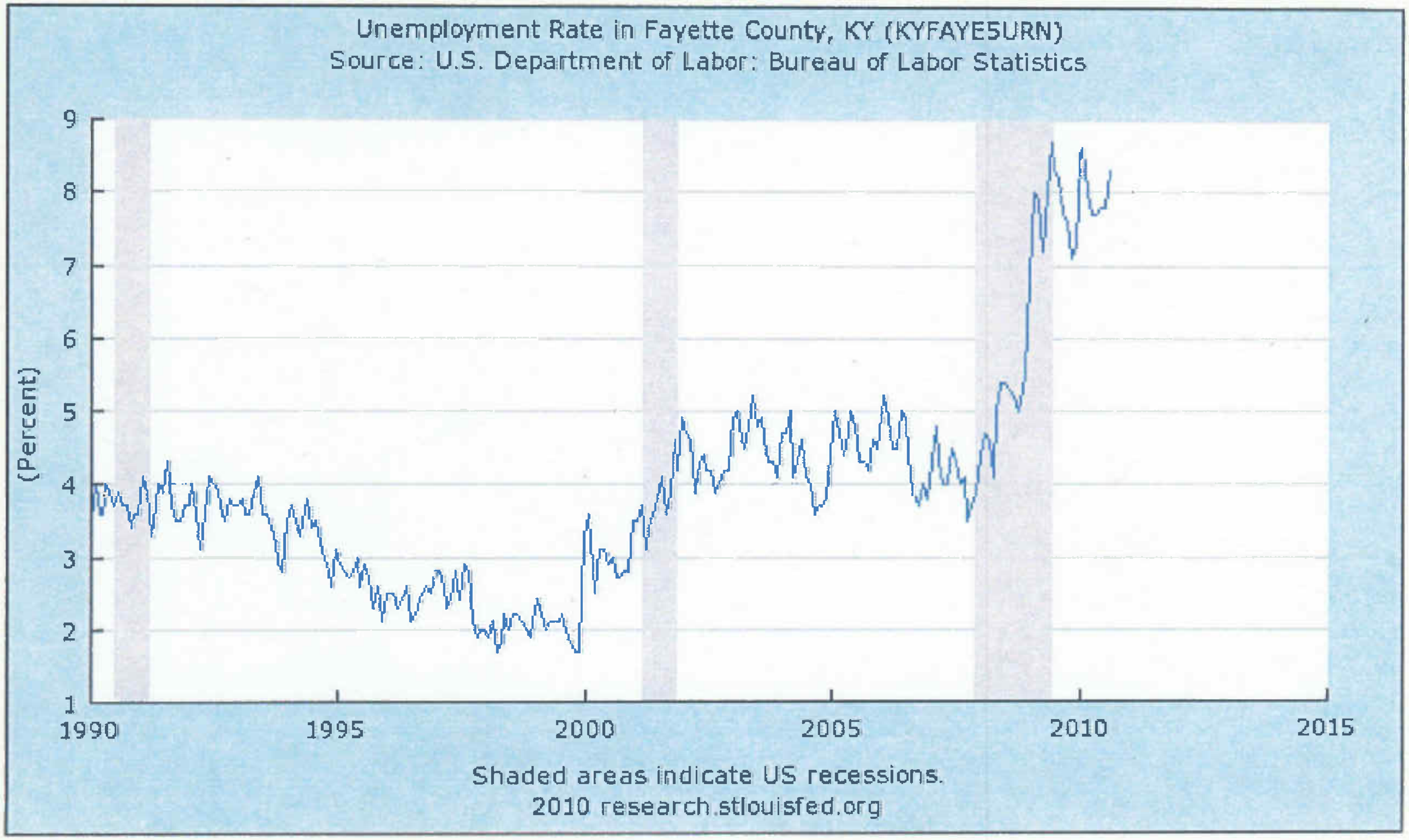
Budget & Finance Committee

Financial Update
October 26, 2010

Comparative Unemployment Rates



Fayette County Unemployment



Economic Indicators

	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep
Fayette County Unemployment Rate	8.5%	8.6%	8.0%	7.7%	7.7%	7.8%	7.8%	8.3%	N/A
Fayette County Employment	138,082	138,790	139,839	140,920	140,638	142,196	141,013	140,722	N/A
Fayette County Permits Issued	874	798	1,139	1,125	1,298	1,407	1,193	1,434	1,427
Fayette County New Business Licenses	180	307	371	613	400	243	350	366	203
Home Sales (MSA)	384	468	569	740	917	871	585	539	465
Fayette County Foreclosures	25	48	61	47	65	50	51	94	52

N/A – Data currently not available

September Actual/Adopted Budget

Revenue Category	September 2010 Monthly Actual Compared to Adopted Budget			
	Actual	**Budget**	**Variance**	**Percent**
OLT- Employee Withholding	11,485,648	11,952,525	(466,877)	-3.9%
OLT - Net Profit	3,524,846	3,673,405	(148,559)	-4.0%
Insurance	9,312	15,065	(5,753)	-38.2%
Franchise Fees	386,451	396,425	(9,974)	-2.5%
TOTALS	15,406,257	16,037,420	(631,163)	-3.9%

September YTD Actual/Adopted YTD Budget

Revenue Category	September YTD Actual Compared to Adopted YTD Budget			
	Actual	Budget	Variance	Percent
OLT- Employee Withholding	37,140,820	36,397,557	743,263	2.0%
OLT - Net Profit	5,306,073	5,074,904	231,169	4.6%
Insurance	5,561,400	4,679,957	881,443	18.8%
Franchise Fees	3,524,040	3,796,067	(272,027)	-7.2%
TOTALS	51,532,333	49,948,485	1,583,848	3.2%

September YTD Actual Less Amnesty/Adopted YTD Budget

Actual YTD Less Amnesty YTD Compared to Adopted Budget

Revenue Category	Sept '10 YTD	Amnesty	Sept '10 Actual Less Amnesty	YTD '10 Budget	Variance	%
OLT- Employee Withholding	37,140,820	(355,031)	36,785,789	36,397,557	388,232	1.07%
OLT - Net Profit	5,306,073	(939,689)	4,366,384	5,074,904	(708,520)	-13.96%
Insurance	5,561,400	0	5,561,400	4,679,957	881,443	18.83%
Franchise Fees	3,524,040	0	3,524,040	3,796,067	(272,027)	-7.17%
TOTALS	51,532,333	(1,294,720)	50,237,613	49,948,485	289,128	0.58%

2010 OLT Amnesty Results

AMNESTY RECEIPTS as of 8/30/2010		Jun	Jul	Aug	Total
Net Profits	976,570	36,882	480,167	459,522	976,571
Payroll	376,520	21,489	226,445	128,586	376,520
Other	543	125	265	153	543
	1,353,633	**58,496**	**706,877**	**588,261**	**1,353,634**
P/A (170 accts)	350,403				
TOTAL	**1,704,036**				

The Jun–Total columns are headed **Monthly Breakdown**.

1,152 Total Accounts

245 New Accounts

OLT – Withholding
January – September (Excludes Amnesty)

	2010	2009	% Change
January	7,073,744	5,023,980	40.8%
February	19,918,328	22,770,225	-12.5%
March	11,586,909	10,752,898	7.8%
April	6,975,439	6,974,110	0.0%
May	17,739,885	16,018,649	10.7%
June*	11,598,043	12,993,693	-10.7%
July*	8,589,710	8,873,135	-3.2%
August*	16,710,431	15,880,402	5.2%
September	11,485,648	11,486,593	0.0%
January - September	111,678,137	110,773,684	0.8%

* Excludes Amnesty	
June	21,489
July	226,445
August	128,586
Total	376,520

OLT – Net Profit
January – September (Excludes Amnesty)

	2010	2009	% Change
January	1,086,387	1,268,551	-14.4%
February	609,802	545,777	11.7%
March	1,746,690	2,641,805	-33.9%
April	10,161,989	10,890,314	-6.7%
May	864,780	1,028,820	-15.9%
June*	2,526,472	2,373,275	6.5%
July*	415,581	849,319	-51.1%
August*	425,957	402,641	5.8%
September	3,524,846	3,718,942	-5.2%
January-September	21,362,504	23,719,444	-9.9%

* Excludes Amnesty	
June	36,882
July	480,167
August	459,522
Total	976,571

Revenue Update

- Questions ?

Budget & Finance Committee

Eastern State Hospital Capital Funding Overview

October 26, 2010

Background

April 21, 2009 – Presentation to Council

- *Presenters*: Governor Steve Beshear, Secretary Janie Miller, & Secretary Jonathan Miller
- *Purpose:* Review Eastern State funding structure & responsibilities

April 23, 2009 – Executed Memorandum of Understanding

- *Parties:* Finance and Administration Cabinet, the Cabinet for Health and Family Services and the Lexington-Fayette Urban County Government
- *Purpose:* Legal document defining structure & responsibilities

Background (cont.)

June 25, 2009 – Closed $8MM in BAN (Series 2009C)

- *Interest & Expenses:* Capitalized
- *Security:* LFUCG General Obligation
- *Maturity:* July 15, 2010

June 25, 2010 – Closed $65MM in BAN (Series 2010E)

- *Interest & Expenses:* Capitalized
- *Security:* LFUCG General Obligation
- *Maturity:* August 1, 2011
- MOU was amended

Series 2009C Memorandum of Understanding

State Authority & Responsibility

- House Bill 406, Adopted by the General Assembly on April 2, 2008
- Authorized the FAC & CHFS to enter into an agreement with LFUCG
- Agree funding is in current Budget Bill and request by CHFS for inclusion in the Executive Branch 2010-2012 Budget for consideration by the General Assembly

LFUCG Authority & Responsibility

- Ordinance No. 58-2009, Adopted on April 23, 2009
- Issue obligations in an aggregate principal amount not to exceed $140,000,000 for construction of Eastern State Hospital

Series 2009C MOU – Multi-Phase Process

Phase I

- Issue in CY 2009 approximately $8MM in General Obligation Bond Anticipation Notes

Phase II

- Issue in CY 2010 approximately $70MM in General Obligation Bond Anticipation Notes

Phase III

- Issue in CY 2011 the final interim financing and upon occupancy enter into a ground lease providing for lease rental payments to be made by CHFS to LFUCG subject to biennial appropriations

Series 2010E Supplemental MOU

House Bill 1 of the 2010 Extraordinary Session

- Authorizes CHFS to pay rental payment to LFUCG pursuant to a lease agreement, in the event the Project is occupied
- Upon Completion and occupancy … LFUCG will enter into a ground lease … providing for lease rental payments to be made by CHFS to LFUCG subject to biennial appropriations **paid by the General Fund Surplus Account (KRS 48.700) or the Budget Reserve Trust Fund Account (KRS 48.705)**

MEMORANDUM OF UNDERSTANDING

This **MEMORANDUM OF UNDERSTANDING** (the "Memorandum") is made by and among the **FINANCE AND ADMINISTRATION CABINET** (the "FAC") of the Commonwealth of Kentucky (the "State"), the **CABINET FOR HEALTH AND FAMILY SERVICES** ("CHFS") of the State and the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT** (the "Lexington-Fayette Urban County Government") to memorialize their understandings and intentions regarding the financing of the design and construction of a new state mental health facility to replace Eastern State Hospital (the "Project").

WHEREAS, House Bill 406, adopted by the General Assembly on April 2, 2008, signed by the Governor on April 18, 2008 and currently in effect (the "Budget Bill"), authorized FAC and CHFS to enter into an agreement with the Lexington-Fayette Urban County Government or its public properties corporation to provide for the financing of the Project;

WHEREAS, the Project will be owned by the State and operated by CHFS and located within the boundaries of Lexington, Fayette County, Kentucky;

WHEREAS, the Lexington-Fayette Urban County Government is willing to issue obligations (the "Obligations") in an aggregate principal amount not to exceed $140,000,000 (including capitalized interest and the other expenses necessary to finance the Obligations), from time to time in one or more series, to provide for the financing of the Project;

WHEREAS, FAC, CHFS and the Lexington-Fayette Urban County Government intend to coordinate their efforts to provide for the Project in the most cost effective manner;

WHEREAS, the parties are entering into this Memorandum in order to memorialize their intentions and agreements with respect to the financing of the Project;

NOW, THEREFORE FAC, CHFS and the Lexington-Fayette Urban County Government mutually agree as follows:

I. FINANCING PROVISIONS

A. Authorization.

FAC, CHFS and the Lexington-Fayette Urban County Government understand and agree that the Project is authorized in the current Budget Bill (see relevant excerpt attached as ***Exhibit A*** hereto) and the funding to repay the Obligations will be requested by CHFS in its biennial budget request for inclusion in the Executive Branch 2010-2012 Budget for consideration by the 2010 General Assembly of the State.

B. Estimated Project Costs.

The current Budget Bill authorizes Project costs of $129,005,000, excluding capitalized interest and other expenses necessary to finance the Obligations.

The Lexington-Fayette Urban County Government anticipates the issuance of the Obligations in an aggregate principal amount not to exceed $140,000,000 (including capitalized interest and the other expenses necessary to finance the Obligations), from time to time in one or more series, to provide for the financing of the Project.

C. Proposed Structure.

FAC and CHFS hereby consent to the issuance of the Obligations by the Lexington-Fayette Urban County Government and the application of the proceeds of such Obligations for the purpose of financing all or a portion of the Project. The use of the proceeds of the Obligations will be administered by a paying agent/trustee on behalf of the Lexington-Fayette Urban County Government. FAC and CHFS will submit requisitions to the Lexington-Fayette Urban County Government and to such paying agent/trustee in order to pay the costs of the Project from the proceeds of the Obligations.

The Lexington-Fayette Urban County Government shall have no financial responsibility for any costs and expenses related to the Obligations issued to finance the Project. All such costs and expenses shall be paid from the proceeds of such Obligations. In any event, the Lexington-Fayette Urban County Government shall be reimbursed in full by FAC and/or CHFS for any amounts paid by the Lexington-Fayette Urban County Government with respect to the Obligations.

The financing is anticipated to consist of three phases.

1. *Phase I* – The Lexington-Fayette Urban County Government (or its public properties corporation) currently anticipates issuing Obligations in the form of general obligation bond anticipation notes in the approximate amount of $8,000,000 in calendar year 2009 (or some other type of Obligation to be issued through its public properties corporation) (the "2009 Obligations") for design and other preliminary costs associated with the Project.

The 2009 Obligations will be issued by the Lexington-Fayette Urban County Government (or its public properties corporation) via competitive bid in a manner determined and authorized by the Lexington-Fayette Urban County Government. The 2009 Obligations shall mature in approximately 397 days or as otherwise extended pursuant to the terms of the purchase contract with respect to such 2009 Obligations. The interest rates shall be market rates as of the date of sale of such 2009 Obligations.

FAC, CHFS and the Lexington-Fayette Urban County Government agree that all costs associated with the 2009 Obligations, including payment of principal and interest, will be provided for as follows: (i) interest on the 2009 Obligations may be capitalized and (ii) at maturity, the principal amount of the 2009 Obligations will be either: (a) refunded by (1) additional Obligations to be issued by the Lexington-Fayette Urban County Government or its public properties corporation or (2) obligations to be issued by FAC through the State Property and Buildings Commission ("SPBC"); or (b) paid in full by FAC and/or CHFS.

2. *Phase II* - The Lexington-Fayette Urban County Government (or its public properties corporation) currently anticipates issuing Obligations in the form of general obligation bond anticipation notes in the approximate amount of $70,000,000 in calendar year 2010 (or some other type of Obligation to be issued through its public properties corporation) (the "2010 Obligations" and collectively with the 2009 Obligations and any other Obligations issued in the form of general obligation bond anticipation notes, the "Note Obligations") for the construction of the Project.

The 2010 Obligations will be issued by the Lexington-Fayette Urban County Government (or its public properties corporation) via competitive bid in a manner determined and authorized by the Lexington-Fayette Urban County Government. The 2010 Obligations shall mature in approximately 397 days or as or as otherwise extended pursuant to the terms of the purchase contract with respect to such 2010 Obligations. The interest rates shall be market rates as of the date of sale of such 2010 Obligations.

FAC, CHFS and the Lexington-Fayette Urban County Government agree that all costs associated with the 2010 Obligations, including payment of principal and interest, will be provided for as follows: (i) interest on the 2010 Obligations may be capitalized and (ii) at maturity, the principal amount of the 2010 Obligations will be either: (a) refunded by (1) additional Obligations to be issued by the Lexington-Fayette Urban County Government or its public properties corporation or (2) obligations to be issued by FAC through the State Property and Buildings Commission ("SPBC"); or (b) paid in full by FAC and/or CHFS..

Phase III – Upon the completion and occupancy of the Project by CHFS, FAC, CHFS and the Lexington-Fayette Urban County Government will enter into a ground lease with respect to the lease of the real property and a lease agreement (the "Lease Agreement"), providing for lease rental payments (the "Lease Payments") to be made by CHFS to the Lexington-Fayette Urban County Government, subject to biennial appropriation, in amounts sufficient to pay the principal and interest when due until maturity on Obligations anticipated to be issued by the Lexington-Fayette Urban County Government (or its public properties corporation) in the form of revenue obligations (the "Lease Revenue Obligations") in the approximate amount not to exceed $140,000,000 (including capitalized interest and the other expenses necessary to finance the Obligations) in calendar year 2011. The proceeds of the Lease Revenue Obligations will be used to pay the remainder of the Project costs and to refund the Note Obligations. Upon the execution of the Lease Agreement by all parties, this Memorandum shall terminate.

The Lease Revenue Obligations will be issued by the Lexington-Fayette Urban County Government (or its public properties corporation) via competitive bid. The interest rates shall be market rates as of the date of sale of such Lease Revenue Obligations.

The parties agree that alternatively FAC may issue obligations for the permanent financing of the Project through SPBC to pay off all outstanding amounts with respect to the Note Obligations. Upon such an issuance of obligations through SPBC and the repayment of all outstanding amounts with respect to the Note Obligations, this Memorandum shall terminate.

D. Financing Team.

The Lexington-Fayette Urban County Government has retained under existing contractual arrangements Morgan Keegan & Company, Inc., as financial advisor, and Peck, Shaffer & Williams LLP, as bond counsel, for the financing of the Project.

E. Records.

The Lexington-Fayette Urban County Government agrees it shall require the paying agent/trustee to supply to FAC and CHFS a monthly accounting of all funds maintained with respect to the Project. FAC and/or CHFS may review, at any time, any and all financial documents with respect to the Project.

II. PROJECT

A. Project.

The Project consists of the design and construction of a new state mental health facility to replace Eastern State Hospital to be located at the University of Kentucky's Coldstream Campus on Newtown Pike in Lexington, Fayette County, Kentucky or another site in Fayette County, Kentucky as agreed to by CHFS.

B. Procurement.

FAC on behalf of CHFS shall procure all architectural and construction services related to the Project.

C. General Responsibility for the Project.

Neither the Lexington-Fayette Urban County Government nor its public properties corporation shall be responsible for any part of the design, construction, operation or maintenance of the Project.

D. Operation of the Project.

CHFS shall pay all operating costs of the Project, including lighting, heating and air conditioning, electricity and other utilities, janitorial service, rent, property insurance, and necessary maintenance, repair, and upkeep of the Project. In addition, CHFS shall be responsible for obtaining all necessary governmental approvals, licenses, permits and consents and compliance with all zoning laws and any other legal requirements.

III. TERM OF MEMORANDUM.

This Memorandum shall be effective on the 1st day of May, 2009 (the "Effective Date"). This Memorandum will remain in full force and effect from the Effective

Date until such time as it is terminated by any party upon ten (10) days' written notice to the other parties hereto. Notwithstanding the foregoing, it is agreed that this Memorandum may not be terminated by any party during a period when any Obligations issued pursuant to the terms hereof remain outstanding unless the parties hereto mutually agree in writing to the terms of such termination.

This Memorandum shall terminate by its terms when (i) all outstanding amounts with respect to the Obligations have been paid in full and the Obligations are no longer outstanding; or (ii) the parties hereto have entered into a Lease Agreement providing for the payment by CHFS of Lease Payments to the Lexington-Fayette Urban County Government, subject to biennial appropriation, in amounts sufficient to pay the principal and interest when due until maturity on the Lease Revenue Obligations anticipated to be issued by the Lexington-Fayette Urban County Government.

IV. APPLICABLE LAW.

All questions as to the execution, validity, interpretation, construction and performance of this Memorandum shall be governed by the laws of the Commonwealth of Kentucky. Furthermore, FAC, CHFS and the Lexington-Fayette Urban County Government agree that any legal action which is brought on the basis of this Memorandum shall be filed in the Fayette County Circuit Court of the Commonwealth of Kentucky or the Franklin County Circuit Court of the Commonwealth of Kentucky.

V. AMENDMENTS.

This Memorandum may be amended by the parties as may be necessary. Any such amendment must be made in writing and agreed to by each party.

IN WITNESS WHEREOF, the parties have caused this Memorandum of Understanding to be executed by their duly authorized officers as of April 23, 2009.

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

By: Jim Newberry
Jim Newberry
Mayor

Date: April 23, 2009

Approved as to Form and Legality:

By:
Name: DAVID BARBERIE
Title: ATTORNEY SENIOR
Department of Law

FINANCE AND ADMINISTRATION CABINET OF THE COMMONWEALTH OF KENTUCKY

By:
Name: Jonathan Miller
Title: Secretary, Finance and Administration Cabinet

Date: April 28, 2009

Approved as to Form and Legality:

By: E. Jeffrey Mosley
Name: E. Jeffrey MOSLEY
Title: General Counsel
Office of General Counsel

145165 PSW JCM/cab

CABINET FOR HEALTH AND FAMILY SERVICES OF THE COMMONWEALTH OF KENTUCKY

By: Janie Miller

Name:

Title: Secretary

Date: 4/28, 2009

Approved as to Form and Legality:

By: Kerry B. Harvey

Name: Kerry B. Harvey

Title: General Counsel

Office of General Counsel

Document Prepared By:

By: JC Merchant

John C. Merchant, Esq.

Peck, Shaffer & Williams LLP

Date: April 23, 2009

145165 PSW JCM/cab

EXHIBIT A

EXCERPT FROM HOUSE BILL 406

145165 PSW JCM/cab

Other Funds	3,000,000	-0-
004. Instant Ticket Vending Machines		
Other Funds	2,000,000	-0-
005. Network Storage and Associated Infrastructures		
Other Funds	350,000	-0-

H. HEALTH AND FAMILY SERVICES CABINET

Budget Units	**2008-09**	**2009-10**
1. GENERAL ADMINISTRATION AND PROGRAM SUPPORT		
001. Maintenance Pool - 2008-2010		
Bond Funds	3,000,000	-0-
2. MENTAL HEALTH AND MENTAL RETARDATION SERVICES		
001. Fayette County - Lease		
002. Franklin County - Lease		
003. Construct Hazelwood Intermediate Care Facility for the Mentally Retarded/Developmentally Disabled		
Bond Funds	10,000,000	-0-

(1) Site Preparation: The Part I, Operating Budget, for Mental Health/Mental Retardation includes $400,000 in General Fund support in fiscal year 2008-2009 for site preparation of the Hazelwood ICF MR/DD as set forth in Part I, H., 4., (5), of this Act.

004. Construct Replacement of Eastern State Hospital		
Other Funds	129,005,000	-0-

(1) Property Lease: The Finance and Administration Cabinet and the Cabinet for Health and Family Services are authorized to execute a long-term lease with the University of Kentucky for property at the University of Kentucky's Coldstream Research Campus on Newtown Pike in Lexington, Kentucky for the sum of one dollar per year for 99 years, on which to locate a new mental health facility to replace Eastern State

Hospital.

(2) **Financing, Design and Construction, and Lease-Rental Payments:** The Finance and Administration Cabinet is authorized to enter into an agreement with the Lexington-Fayette Urban-County Government, or its public properties corporation, to provide the financing for a new mental health facility to replace Eastern State Hospital. The Finance and Administration Cabinet, on behalf of the Cabinet for Health and Family Services, shall procure the design and construction of a new mental health facility to replace Eastern State Hospital. The Cabinet for Health and Family Services is authorized to make lease-rental payments to the Lexington-Fayette Urban-County Government, or its public properties corporation, upon the cabinet's occupancy of the new mental health facility.

(3) **Agreement Approval:** Subsections (1) and (2) above are contingent upon the execution and approval by the University of Kentucky Board of Trustees, the Secretary of the Finance and Administration Cabinet on behalf of the Cabinet for Health and Family Services, and the Lexington-Fayette Urban-County Government, or its public properties corporation, of all contractual agreements required by subsections (1) and (2) above. The executed agreements shall be reported to the Interim Joint Committee on Appropriations and Revenue and the Capital Projects and Bond Oversight Committee.

(4) **Vacate Facilities:** The Kentucky Community and Technical College System is authorized to vacate the property on the current Bluegrass Community and Technical College, Cooper Drive Campus, located in Lexington, Kentucky, as determined and agreed to by the University of Kentucky and the Kentucky Community and Technical College System.

(5) **Transfer of Existing Property:** The Finance and Administration Cabinet is authorized to transfer the state property known as Eastern State Hospital, occupied by the Cabinet for Health and Family Services on West Fourth Street in Lexington, Kentucky, to the Kentucky Community and Technical College System at an

appropriate time consistent with the relocation of the Cabinet for Health and Family Services' programs from that property to the new mental health facility, as determined by the Secretary of the Finance and Administration Cabinet.

(6) **Project Status Report:** Within 90 days of the effective date of this Act, the Finance and Administration Cabinet shall report the status of the Replacement of Eastern State Hospital project to the Interim Joint Committee on Appropriations and Revenue. Project status reports to the Interim Joint Committee on Appropriations and Revenue shall be required every six months thereafter, until project completion.

4. DISABILITY DETERMINATION SERVICES

001. Franklin County - Lease

5. COMMUNITY BASED SERVICES

001. Brooklawn Child and Family Services

Bond Funds	2,000,000	-0-

(1) **Permitted Uses:** The above appropriation shall be used to purchase, build, renovate, or make improvements for residential housing of children who are in or have completed the treatment program.

002. Boone County - Lease

003. Boyd County - Lease

004. Johnson County - Lease

005. Fayette County - Lease - Centre Parkway

006. Shelby County - Lease

007. Jefferson County - Lease

008. Fayette County - Lease

009. Kenton County - Lease - Madison Avenue

010. Hardin County - Lease

011. Campbell County - Lease

012. Warren County - Lease

FIRST SUPPLEMENT TO THE

MEMORANDUM OF UNDERSTANDING

This **FIRST SUPPLEMENT TO THE MEMORANDUM OF UNDERSTANDING,** dated as of July 8, 2010 (the "First Supplement") is made by and among the **FINANCE AND ADMINISTRATION CABINET** (the "FAC") of the Commonwealth of Kentucky (the "State"), the **CABINET FOR HEALTH AND FAMILY SERVICES** ("CHFS") of the State and the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT** (the "Lexington-Fayette Urban County Government") to amend and supplement the Memorandum of Understanding dated as of April 28, 2009 (the "Memorandum of Understanding") with respect to the financing of the design and construction of a new state mental health facility to replace Eastern State Hospital (the "Project").

WHEREAS, the Memorandum of Understanding anticipated the financing of the Project in three phrases with the final phase being the completion of the Project in calendar year 2011;

WHEREAS, it is currently anticipated that the completion of the Project will occur in calendar year 2012;

WHEREAS, House Bill 1 of the 2010 Extraordinary Session as adopted by the General Assembly on May 28, 2010, signed by the Governor on June 4, 2010, which is to take effect on July 1, 2010 (the "2010-2012 Budget Bill") authorizes CHFS to pay rental payments to the Lexington-Fayette Urban County Government or its public properties corporation, pursuant to a lease agreement, in the event the Project is occupied by CHFS during the 2010-2012 fiscal biennium;

WHEREAS, this First Supplement allows for the Lexington-Fayette Urban County Government or its public properties corporation to issue obligations in calendar year 2011 or 2012 (the "Obligations") in a principal amount not to exceed $140,000,000 (including capitalized interest and the other expenses necessary to finance the Obligations), to provide financing for the Project;

WHEREAS, this First Supplement provides for FAC, CHFS and the Lexington-Fayette Urban County Government to continue to coordinate their efforts to provide for the Project in the most cost effective manner;

WHEREAS, the parties are entering into this First Supplement to amend and supplement the Memorandum of Understanding in order to further memorialize their intentions and agreements with respect to the financing of the Project;

NOW, THEREFORE FAC, CHFS and the Lexington-Fayette Urban County Government mutually agree as follows:

I. DEFINITIONS.

All terms which are defined in the Memorandum of Understanding shall have the same meanings in this First Supplement, unless defined otherwise herein.

II. **FINANCING PROVISIONS**

A. Amendment to Section I.A. Section I.A. of the Memorandum of Understanding is amended to read as follows:

"A. Authorization.

FAC, CHFS and the Lexington-Fayette Urban County Government understand and agree that the Project and the associated rental payments are authorized in the 2010-2012 Budget Bill (see relevant excerpt attached as ***Exhibit A*** hereto) and the funding to repay the Obligations will be requested by CHFS in its biennial budget request for inclusion in the Executive Branch 2012-2014 Budget for consideration by the 2012 General Assembly of the State."

B. Amendment to Section I.B. Section I.B. of the Memorandum of Understanding is amended to read as follows:

"B. Estimated Project Costs.

The 2010-2012 Budget Bill authorizes Project costs of $129,005,000, excluding capitalized interest and other expenses necessary to finance the Obligations.

The Lexington-Fayette Urban County Government anticipates the issuance of the Obligations in an aggregate principal amount not to exceed $140,000,000 (including capitalized interest and the other expenses necessary to finance the Obligations), from time to time in one or more series, to provide for the financing of the Project."

C. Amendment and Addition to Section I.C.2. The description of "Phase III" in Section I.C.2. of the Memorandum of Understanding is amended to read as follows:

"Phase III - The Lexington-Fayette Urban County Government (or its public properties corporation) currently anticipates issuing Obligations in the form of general obligation bond anticipation notes in the approximate amount of $140,000,000 in calendar year 2011 (or some other type of Obligation to be issued through its public properties corporation) (the "2011 Obligations" and collectively with the 2010 Obligations and any other Obligations issued in the form of general obligation bond anticipation notes, the "Note Obligations") for the construction of the Project.

The 2011 Obligations will be issued by the Lexington-Fayette Urban County Government (or its public properties corporation) via competitive bid in a manner determined and authorized by the Lexington-Fayette Urban County Government. The 2011 Obligations shall mature in approximately 397 days or as or as otherwise extended pursuant to the terms of the purchase contract with respect to such 2011 Obligations. The interest rates shall be market rates as of the date of sale of such 2011 Obligations.

FAC, CHFS and the Lexington-Fayette Urban County Government agree that all costs associated with the 2011 Obligations, including payment of principal and interest, will be provided for as follows: (i) interest on the 2011 Obligations may be capitalized and (ii) at maturity, the principal amount of the 2011 Obligations will be refunded by additional Obligations to be issued by the Lexington-Fayette Urban County Government or its public properties corporation."

A description of "Phase IV" is hereby added to Section I.C.2. of the Memorandum of Understanding as follows:

"Phase IV – Upon the completion and occupancy of the Project by CHFS, FAC, CHFS and the Lexington-Fayette Urban County Government will enter into a ground lease with respect to the lease of the real property and a lease agreement (the "Lease Agreement"), providing for lease rental payments (the "Lease Payments") to be made by CHFS to the Lexington-Fayette Urban County Government, subject to biennial appropriation, in amounts sufficient to pay the principal and interest when due until maturity on Obligations anticipated to be issued by the Lexington-Fayette Urban County Government (or its public properties corporation) in the form of revenue obligations (the "Lease Revenue Obligations") in the approximate amount not to exceed $140,000,000 (including capitalized interest and the other expenses necessary to finance the Obligations) in calendar year 2012. The proceeds of the Lease Revenue Obligations will be used to pay the remainder of the Project costs and to refund the Note Obligations. Upon the execution of the Lease Agreement by all parties, this Memorandum and the First Supplement shall terminate.

The Lease Revenue Obligations will be issued by the Lexington-Fayette Urban County Government (or its public properties corporation) via competitive bid. The interest rates shall be market rates as of the date of sale of such Lease Revenue Obligations.

The parties agree that alternatively FAC may request authorization in the 2012-2014 Executive Branch Budget to issue obligations for the permanent financing of the Project through SPBC to pay off all outstanding amounts with respect to the Note Obligations. Upon such an issuance of obligations through SPBC and the repayment of all outstanding amounts with respect to the Note Obligations, this Memorandum and the First Supplement shall terminate."

III. TERM OF FIRST SUPPLEMENT.

This First Supplement shall be effective on the 8 day of July, 2010 (the "Effective Date"). This First Supplement will remain in full force and effect from the Effective Date until such time as it is terminated by any party upon ten (10) days' written notice to the other parties hereto. Notwithstanding the foregoing, it is agreed that this First Supplement and/or the Memorandum of Understanding may not be terminated by any party during a period when any Obligations issued pursuant to the terms hereof remain outstanding unless the parties hereto mutually agree in writing to the terms of such termination.

This First Supplement shall terminate by its terms when (i) all outstanding amounts with respect to the Obligations have been paid in full and the Obligations are no longer outstanding; or (ii) the parties hereto have entered into a Lease Agreement providing for the payment by CHFS of Lease Payments to the Lexington-Fayette Urban County Government, subject to biennial appropriation, in amounts sufficient to pay the principal and interest when due until maturity on the Lease Revenue Obligations anticipated to be issued by the Lexington-Fayette Urban County Government.

IV. MEMORANDUM OF UNDERSTANDING.

All other provisions of the Memorandum of Understanding shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have caused this First Supplement to the Memorandum of Understanding to be executed by their duly authorized officers as of July ____, 2010.

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

By: Jim Newberry
Jim Newberry
Mayor

Date: ____________, 2010

Approved as to Form and Legality:

By: David Barberie
Name: DAVID BARBERIE
Title: Attorney Senior
Department of Law

FINANCE AND ADMINISTRATION CABINET OF THE COMMONWEALTH OF KENTUCKY

By: ______________________
Name:
Title:

Date: ____________, 2010

Approved as to Form and Legality:

By: ______________________
Name:
Title:
Office of General Counsel

158939 PSW JCM/cab

IN WITNESS WHEREOF, the parties have caused this First Supplement to the Memorandum of Understanding to be executed by their duly authorized officers as of July ____, 2010.

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

By: ______________________________
Jim Newberry
Mayor

Date: ____________, 2010

Approved as to Form and Legality:

By: ______________________________
Name:
Title:
Department of Law

FINANCE AND ADMINISTRATION CABINET OF THE COMMONWEALTH OF KENTUCKY

By: C. Jeffrey Mosley for
Name: Jonathan Miller
Title: Secretary

Date: 7/2, 2010

Approved as to Form and Legality:

By: Patrick McGee
Name: PATRICK McGEE
Title: Attorney
Office of General Counsel

158939 PSW JCM/cab

CABINET FOR HEALTH AND FAMILY SERVICES OF THE COMMONWEALTH OF KENTUCKY

By: ______________________

Name:

Title:

Date: July 19, 2010

Approved as to Form and Legality:

By: ______________________

Name: Carlton S. Shier IV

Title: Deputy General Counsel

Office of General Counsel

Document Prepared By:

By: ______________________

John C. Merchant, Esq.

Peck, Shaffer & Williams LLP

Date: July __, 2010

158939 PSW JCM/cab

EXHIBIT A

EXCERPTS FROM 2010-2012 BUDGET BILL

(House Bill 1 of the 2010 Extraordinary Session as adopted by the General Assembly on May 28, 2010, signed by the Governor on June 4, 2010)

(4) **Replacement of Eastern State Hospital:** The Commonwealth recognizes the statutory role of community mental health/mental retardation boards in providing mental health and mental retardation services across the Commonwealth. Notwithstanding any other provision of law to the contrary, the Secretary of the Cabinet for Health and Family Services shall solicit a proposal from the Bluegrass Regional Mental Health and Mental Retardation (MH/MR) Board, Inc. to operate a new Eastern State Facility constructed to replace the existing Eastern State Hospital facility.

Notwithstanding any other provision of law to the contrary, upon a finding by the Secretary that the proposal meets programmatic requirements for the anticipated population and its needs and upon a further finding that the financial provisions are satisfactory, the cabinet may enter into a contractual arrangement with Bluegrass Regional MH/MR Board, Inc. to operate the facility without soliciting competing proposals.

(5) **Rental Payments:** If the new mental health facility to replace Eastern State Hospital as authorized in this Act is occupied by the Cabinet for Health and Family Services during the 2010-2012 fiscal biennium, all associated rental payments shall be deemed a necessary government expense and shall be paid from the General Fund Surplus Account (KRS 48.700) or the Budget Reserve Trust Fund Account (KRS 48.705), subject to the conditions and procedures provided in this Act.

From: Part I – Operating Budget – G. Health and Family Services Cabinet – 4. Behavioral Health, Developmental and Intellectual Disabilities – (4) and (5).

****

001. Eastern State Hospital Replacement

Other Funds	$129,005,000	-0-

(1) **Property Lease:** The Finance and Administration Cabinet and the Cabinet for Health and Family Services are authorized to execute a long-term lease with the University of Kentucky for property at the University of Kentucky's Coldstream Research Campus on Newtown Pike in Lexington, Kentucky for the sum of one dollar per year for 99 years, on which to locate a new mental health facility to replace Eastern State Hospital.

(2) **Financing, Design and Construction, and Lease-Rental Payments:** The Finance and Administration Cabinet is authorized to enter into an agreement with the Lexington-