

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT
NEWTOWN PIKE EXTENSION (KY 922)
HIGHWAY PLAN ITEM NO. 7-593.05
SUPPLEMENTAL MOA NO. 3

Contract # 36-2009

AGREEMENT BETWEEN
COMMONWEALTH OF KENTUCKY
TRANSPORTATION CABINET
DEPARTMENT OF HIGHWAYS
AND
LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT
SUPPLEMENTAL AGREEMENT NO. 3

WHEREAS, the Lexington-Fayette Urban County Government (**LFUCG**) and the Department of Highways (**Department**) entered into an agreement on December 13, 2000 (C-00343167) wherein the **Department** was to make available to the **LFUCG** up to \$6,000,000 (80% of the total cost) in federal Transportation Improvement Program funds for the Lexington Urbanized Area and was to provide up to \$1,500,000 (20% local matching funds) from non-federal sources for the **LFUCG** to conduct the planning and design phase, acquire necessary rights-of-way, relocate utilities, provide all environmental analyses, legal analyses, advertise for bids, develop construction contracts and supervise construction of the Newtown Pike extension in the City of Lexington in Fayette County (**Project**);

WHEREAS, these same two parties entered into Supplemental Agreement No. 1 on March 9, 2009 wherein the **Department** provided the **LFUCG** with an additional \$3,975,000 in funds as necessary for completion of design plans, right-of-way appraisals, utility relocation, and mitigation for the continuation of the **Project**;

WHEREAS, these same two parties entered into Supplemental Agreement No. 2 on July 10, 2011 wherein the **Department** provided the **LFUCG** with an additional \$5,088,000 in funds to develop right-of-way and construction plans for Phase II and Phase III of the **Project**, as well as

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mitigation funding assistance, and additional right-of-way funding for acquisition of parcels by the **Department**; and

WHEREAS, the **LFUCG** now requires funds of \$194,928 to supplement the monthly rents of individuals who were displaced by the **Project (Supplemental Rent Fund)** who will reside in housing units located in the Lexington Community Land Trust Area (**Property**) for at least seventy eight (78) months beyond their initial forty-two (42) month term provided for by the Record of Decision for the **Project**;

WHEREAS, the **LFUCG** now requires funds of \$348,173 for the maintenance, repairs and improvements to the original fourteen (14) housing units constructed on the **Property (Capital Improvement Fund)**;

WHEREAS, the **LFUCG** now requires funds of \$50,000 to provide educational and social services for the benefit of those individuals residing in the housing units located on the **Property (Education and Social Services Fund)**; and

WHEREAS, the **Department** agrees to make available an additional \$100,000 in state funding for **Project** expenses associated with the establishment of the Lexington Community Land Trust. The **Department** agrees to make available an additional \$50,000 in state funding for expenses associated with the maintenance of the Temporary Housing Area. **LFUCG** agrees that the **Department** shall retain \$200,000 for state force activities; and

WHEREAS, the **Supplemental Rent Fund, Capital Improvement Fund, and Education and Social Services Fund** are sometimes collectively referred to herein as the **Additional Funds**.

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NOW, THEREFORE, the **LFUCG** and **Department**, acting on behalf of the Kentucky Transportation Cabinet, do hereby mutually agree to this Supplemental Agreement No. 3 as follows:

1. Transfer of Funds. Within ten (10) calendar days from the date of the full execution of this Supplemental Agreement No. 3, the **Department** shall transfer to the **LFUCG** the amounts set forth above for the **Supplemental Rent Fund** and the **Capital Improvement Fund**. The **LFUCG** shall maintain these funds in a federally insured financial institution in two (2) separate interest bearing bank accounts approved by the **Department**, each of which shall be designated with the name of the appropriate Fund. The **LFUCG** shall provide the **Department** with the name of the financial institution, routing number and account number for each Fund.

2. Supplemental Rent Fund.
 - (a) Purpose and Scope. The **Supplemental Rent Fund** comprised of the amount of \$194,928 shall be used by the **LFUCG** solely for the purpose of supplementing the monthly rents of those individuals displaced by the **Project** and residing in housing units located on the **Property** for an additional 78 months beyond the traditional 42 month relocation housing Project (**Qualified Individuals**). The **LFUCG** shall provide to the **Department**, simultaneously and in conjunction with the execution of this Agreement, a schedule containing the names, addresses, and telephone numbers of the **Qualified Individuals**.

 - (b) Expenditures. All expenditures authorized by the **LFUCG** from the **Supplemental Rent Fund** for those **Qualified Individuals** residing in housing units on the **Property** shall be

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paid by the **LFUCG** from the account referenced in Section 1, above, directly to the manager of the **Property**, AU Associates, Inc. (AU), on a quarterly basis pursuant to a written invoice provided by AU to the **LFUCG**. AU shall refund to the **LFUCG** the appropriate portion of supplemental rent for those **Qualified Individuals** who vacate a housing unit on the **Property**.

- (c) Annual Rent Rate Increase Limit. In order to ensure funds are available for **Qualified Individuals**, and as a condition of AU's receipt of Funds provided for by Section 2(a), above, the **LFUCG** shall impose upon AU a limit on the increase of the yearly amount of rent for **Qualified Individuals**. At no time shall any **Qualified Individual's** yearly amount of rent increase by more than 3% per annum. The **LFUCG** shall implement procedures to monitor and ensure AU's compliance with the provisions of this Section 2(b).
- (d) Reversion of Funds. The funds designated for **Qualified Individuals** who become deceased, have vacated a housing unit on the Property, or who otherwise do not meet the qualifications to receive money from the **Supplemental Rent Fund** shall remain in the account referenced in Section 1 above. If any **Qualified Individuals** become deceased, have vacated a housing unit on the Property, or otherwise do not meet the qualifications for the **Supplemental Rent Fund**, then the funds maintained by the **LFUCG** for those remaining **Qualified Individuals** may continue to be disbursed from the **Supplemental Rent Fund** by the **LFUCG** to AU in accordance with the terms of this Agreement until the funds have been fully expended by the **LFUCG**. In the event there are no **Qualified Individuals**, any Funds remaining in the **Supplemental Rent Fund** shall be transferred to the **Maintenance, Repair and Improvement Fund**.

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(e) No withdrawals shall be made by the **LFUCG** from the **Supplemental Rent Fund** until 42 months after the **Qualified Individuals** have been relocated to the **Property**.

3. Capital Improvement Fund.

(a) Purpose and Scope. The **Capital Improvement Fund** comprised of the amount of \$348,173 shall be expended by the **LFUCG** solely for the repair and improvement of the original fourteen (14) units located on the **Property** which are more particularly described as follows:

800 DeRoode Street
804 DeRoode Street
808 DeRoode Street
812 DeRoode Street
820 DeRoode Street
830 DeRoode Street

The **Capital Improvement Fund** shall be used by the **LFUCG** for all maintenance, repairs and improvements deemed necessary to the above-described property after a period of fifteen (15) years has elapsed from the date said Funds are received by the **LFUCG**. The **Capital Improvement Fund** shall be available to the **LFUCG** for expenditure for a period of ninety-nine (99) years from the date the Funds are deposited into the bank account referenced in Section 1 of this Agreement.

(b) Remaining Balance of the Capital Improvement Fund. The remaining balance of the **Capital Improvement Fund**, if any, shall be returned by the **LFUCG** to the **Department**.

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(c) Invoices. All contractors performing maintenance, repairs and improvements to the **Property** from and after the fifteen (15) year time period set forth above, prior to work commencing, shall provide to the **LFUCG** written estimates. Upon approval of these estimates by the **LFUCG**, work may commence on the **Property**. Contractors shall provide written invoices to the **LFUCG** for all work completed. Approved, eligible invoices shall be paid from the **Capital Improvement Fund** in accordance with this Section 3.

4. Education and Social Services Fund.

(a) Purpose and Scope. The Department shall maintain an **Education and Social Services Fund** comprised of the amount of \$50,000. The amount of this Fund shall be expended by the **LFUCG** for education and social services to any individuals residing in housing units located on the **Property** in order to improve their lives.

The **LFUCG**, upon the prior approval of the **Department**, shall approve the expenditure of its own funds for **Qualified Individuals** for education and social services deemed necessary, including, without limitation, the following programs:

Anti-Drug Abuse Education

Financial Counseling such as “Bridges Out of Poverty – Getting ahead in a Just Getting By World”

Health Education Workshops

Nutritional Counseling

Mental Health Education Programs

Job Training Programs

Training to Further Communication with Landlords

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- (b) Reimbursement. The **Department** shall reimburse the **LFUCG** from the **Education and Social Services Fund** for the amounts it expends for educational and social services approved by the **Department**. Reimbursement by the **Department** shall not be provided to the **LFUCG** if any requirements of this Agreement are not met. In order to obtain reimbursement, the **LFUCG** shall submit properly supported documents with all reimbursement requests to the LPA Coordinator for **Project**. The **LFUCG** shall also submit with the request for reimbursement a formal letter that certifies that the education and social services have been provided in accordance with the terms of this Agreement, and that the request for reimbursement in no way represents any degree of duplication of payments that have or will be received from other funding sources. This formal letter must be signed by the designated project manager in charge for the **LFUCG**.
5. Design Mitigation Fund. The **Department** agrees to make available up to an additional \$100,000 in state funding for design mitigation expenses for the **Project** in order to reimburse the **LFUCG** for miscellaneous expenses associated with the establishment of the Lexington Community Land Trust in accordance with the provisions of the Newtown Pike Extension Record of Decision.
6. Temporary Housing Fund. The **Department** also agrees to make available an additional \$50,000 in state funding for design mitigation expenses in order to reimburse the **LFUCG** for activities associated with the maintenance of the Temporary Housing Area in accordance with the provisions of the Newtown Pike Extension Record of Decision.
7. State Work Force Fund. The **Department** shall retain \$200,000 for expenses incurred by the **Department** for additional design services, including, without limitation, subsurface

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testing for geotechnical and environmental reviews provided to the **Project** by the **Department**.

8. Accounting. The **LFUCG** shall provide to the **Department** on a quarterly basis a full accounting of the **Supplemental Rent Fund** and **Capital Improvement Fund** for all amounts expended pursuant to Section 3 and Section 4 of this Agreement. The accounting provided by the **LFUCG** to the **Department** shall include, without limitation, a bank account statement and canceled checks showing the amounts disbursed by the **LFUCG** to the AU, to **Qualified Individuals** by the AU, and contractors.
9. Inspection. The **LFUCG** shall require AU to conduct periodic physical inspections of the Property on its behalf in order to ensure that **Qualified Individuals** are residing in the housing units located on the Property. AU shall report to the **LFUCG** the names and telephone numbers of all individuals residing in the housing units on the **Property**. If it is determined that any of the **Qualified Individuals** are not residing in a housing unit on the **Property**, then that **Qualified Individual's** supplemental rent shall be withheld by the **LFUCG** and he or she shall not be entitled to educational and social services pursuant to Section 4 of this Agreement.
10. Strict Adherence. The **LFUCG** agrees to expend and administer the **Additional Funds** strictly for the purposes for which they are intended as set forth in this Agreement and shall at all times maintain adequate staff to provide delivery systems and sufficient accounting control to accept responsibility for all administration, staffing, reporting, and monitoring of the **Additional Funds**.

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11. Audit and Inspection. The **LFUCG**, contractor and any subcontractors shall permit the **Department**, the Comptroller General of the United States and the Secretary of the United States Department of Transportation, or their authorized representatives, to inspect all relevant **Additional Funds** data and records, including any audit(s) of the **LFUCG** pertaining to the **Additional Funds**.

12. Access to Records. The **Department** certifies that it is in compliance with the provisions of KRS 45A.695 "Access to contractor's books, documents, papers, records, or other evidence directly pertinent to the contract." The **LFUCG** hereby acknowledges it is responsible to inform any entity it intends to hire or use as a contractor, as defined in KRS 45A.030(9), that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any of the contractor's books, documents, papers, records, or other evidence, which are directly pertinent to this Agreement for the purpose of financial audit or program review. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the contract and shall be exempt from disclosure as provided in KRS 61.878(1)(c). The contractor also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884.

13. Termination. If it is determined by the **Department** that the **LFUCG** is not complying with any provision of this Agreement, then the **Department** may terminate this Agreement upon thirty (30) days written notice. Upon termination of this Agreement by the **Department**, all funds remaining in the **Supplemental Rent Fund** and the **Capital Improvement Fund** shall

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be returned by the **LFUCG** to the **Department** and the **LFUCG** shall have no further right to reimbursement from the **Education and Social Services Fund**.

14. Disputes. Any dispute concerning a question of fact between the **LFUCG** and the **Department** concerning or relating to the **Additional Funds** shall be referred to the Secretary of the Transportation Cabinet of the Commonwealth of Kentucky, or his duly authorized representative, whose decision shall be final. Any proposed change or extension to this Agreement shall be at the mutual consent of the **LFUCG** and the **Department** and shall be evidenced in writing.

15. Resolution. The **LFUCG** shall pass a resolution authorizing the Mayor to sign this Agreement on behalf of the **LFUCG**. An acceptable Resolution shall contain any project name, description, amount of funds being provided and an acknowledgement that the **LFUCG** agrees to ratify and adopt all statements, representations, warranties, covenants, and agreements contained in this Agreement. A copy of the resolution shall be attached to this Agreement and returned to the **Department**.

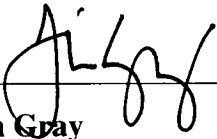
16. Prior Agreements. All other terms and conditions of the original December 13, 2000 agreement (C-00343167) the March 9, 2009 Supplemental Agreement No. 1, and the July 10, 2011 Supplemental Agreement No. 2 shall remain the same and are legally binding.

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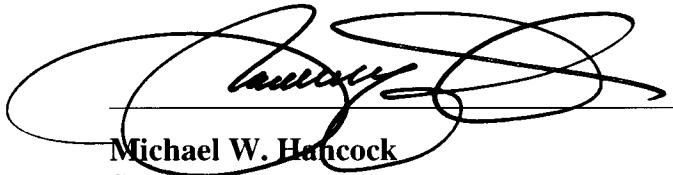
IN TESTIMONY WHEREOF, the parties have caused these presents to be executed by their officers thereunto duly authorized.

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COUNTY GOVERNMENT

COMMONWEALTH OF KENTUCKY
TRANSPORTATION CABINET



Jim Gray
Mayor

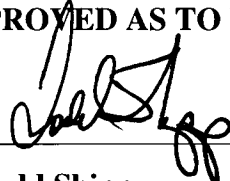


Michael W. Hancock
Secretary

Date: 7/11/14

Date: 7/21/14

APPROVED AS TO FORM & LEGALITY



Todd Shipp
Office of Legal Services
Date: 5/22/14