

**AGREEMENT BETWEEN  
COMMONWEALTH OF KENTUCKY  
TRANSPORTATION CABINET  
DEPARTMENT OF HIGHWAYS  
AND  
LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT  
SUPPLEMENTAL AGREEMENT NO. 4**

**WHEREAS**, the Lexington-Fayette Urban County Government (**LFUCG**) and the **Department** of Highways (**Department**) entered into an agreement on August 29, 2003 (C-03328686) wherein the **Department** provided \$276,000 in federal funds to the **LFUCG** for costs associated with the design of the widening and reconstruction of Clays Mill Road to three lanes including a center turn lane from the underpass at New Circle Road (KY 4) for approximately 1.8 miles to Man O'War Boulevard (Section II), listed in the **Department's** Highway Plan as Item Number 7-224.50, which shall hereinafter be referred to as the **Project**;

**WHEREAS**, these same parties entered into Supplemental Agreement No. 1 on June 25, 2007 whereby the **Department** agreed to make available to the **LFUCG** up to an additional \$487,760 in federal reimbursable funds with a required 20% local match of \$121,940 for the continuation of the design and right-of-way phases for this **Project**;

**WHEREAS**, these same parties entered into Supplemental Agreement No. 2 on March 12, 2009 whereby the **Department** agreed to make available to the **LFUCG** up to an additional \$760,000 in federal reimbursable funds with a required 20% local match of \$190,000 for the utility phase for this **Project**;

**WHEREAS**, these same parties entered into Supplemental Agreement No. 3 on November 3, 2010 whereby the **Department** agreed to make available to the **LFUCG** up to an additional \$60,000 in federal reimbursable funds with a required 20% local match for the design phase and

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up to an additional \$4,140,000 in federal reimbursable funds with a toll credit match for the construction phase and authorized \$20,000 for state oversight for the **Project**;

**WHEREAS**, the Lexington Area Metropolitan Planning Organization Transportation Policy Committee, through the Federal Highway Administration (FHWA) and the **Department**, have allocated an additional \$60,000 in federal surface transportation program funds dedicated to Lexington (SLX) funds for additional design and an additional \$2,440,000 in federal surface transportation program funds (STP) for the construction phase,

**WHEREAS**, the **LFUCG** shall be obligated an additional \$60,000 for design and an additional \$2,420,000 for construction. The **Department** has approved the **LFUCG** to use toll credits in lieu of local funding for the necessary twenty percent (20%) matching funding. The **Department** shall retain an additional \$20,000 for state oversight of the construction phase of this **Project**; and

**WHEREAS**, the **Department** agrees that the **LFUCG** has successfully managed all preconstruction phases and is capable to administer the construction phase of the **Project**.

**NOW, THEREFORE**, the **LFUCG** and the **Department**, acting on behalf of the Kentucky Transportation Cabinet, do hereby mutually agree to this Supplemental Agreement No. 4 as follows:

1. The **LFUCG** shall demonstrate and self-certify they are capable of managing all construction activities and shall maintain adequately qualified staff to complete the **Project** in accordance with all federal and state laws and regulations addressed herein. If necessary qualifications are exhibited, the **Department** agrees to allow the **LFUCG** to perform the letting and construction inspection of this **Project**. The **Department** shall also make available to the

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**LFUCG** any remaining **Project** funds necessary to procure and administer construction, and inspect this **Project** upon completion, while oversight will be handled by the **Department**.

2. It is expressly understood that federal funding for this **Project** is being provided by the FHWA through the **Department**, specifically through the Catalog of Federal Domestic Assistance program number 20.205, Highway Planning and Construction. The federal funding shall not exceed the amount obligated by the FHWA for the **Project**. The **Department** has authorized an additional \$60,000 in SLX funds for the design phase and an additional \$2,440,000 in STP funds for the construction phase. The **LFUCG** shall be obligated up to the additional \$60,000 in federal reimbursable funds for the design phase and an additional \$2,420,000 in federal reimbursable funds for the construction phase for a total of \$2,480,000 to the **LFUCG**. The **Department** has approved the **LFUCG** to use toll credits in lieu of local funding for the necessary twenty percent (20%) matching funding. The **Department** shall retain up to an additional \$20,000 in federal STP funds for state oversight for the construction phase of the **Project** and toll credits will be used in lieu of the matching funds.
3. The total federal funding now made available by the **Department** to the **LFUCG** for this **Project** is \$8,203,760. Any costs exceeding the total funding obligated by the **Department** for this **Project** shall be the responsibility of the **LFUCG**.
4. The **LFUCG** must comply with Federal guidelines listed in 23 CFR 635 for procurement services, and KRS 177, KRS 179, and KRS 45A, the Kentucky Model Procurement Code (MPC), as it relates to State agencies.
5. Effective Date of Agreement and Term of Eligible Reimbursement. The effective date of this agreement is the date of signature by the Secretary of the Cabinet. After execution of the agreement, the Cabinet will return an original agreement to the **LFUCG**. All valid expenses

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since August 29, 2003 are eligible for state reimbursement and will remain so until three (3) years from the date of execution of this Supplemental Agreement No. 4. Expenditures made prior to the effective date of the agreement and before the Notice To Proceed shall not be eligible for reimbursement. The Term of Eligible Reimbursement under this Supplemental Agreement No. 4 shall be three years from the date of its execution unless that Term is extended or amended by written agreement in accordance with the provisions of 23 CFR 635 and KRS 45A. Any and all funding obligated for any Phase of this **Project** defined by the original Scope of Work and authorized changes shall be available to reimburse the **LFUCG** for eligible work activities completed and costs incurred after the effective date of this agreement and the Notice To Proceed covering that Phase of the **Project**, and prior to expiration of this agreement. After that date, no expenditures, no matter when made, are eligible for reimbursement and the **LFUCG** shall be responsible for any unreimbursed expenses and any further expenses incurred to complete the **Project**. After that date, the **LFUCG** shall complete the **Project** without further reimbursement from the **Department** or the **LFUCG** shall refund all prior reimbursements to the **Department**.

6. The **Department** may terminate this contract if funds are not appropriated to the contracting agency or are not otherwise available for the purpose of making payments without incurring any obligation for payment after the date of termination, regardless of the terms of the contract. The **Department** shall provide the **LFUCG** thirty (30) calendar days written notice of termination of the contract.

This agreement is contingent upon the continued availability of appropriated Federal funding. If the funding appropriated for any Phase of the **Project** becomes unavailable for any reason including the Kentucky General Assembly's failure to appropriate the funding, by operation of law or as the result of a reduction in Federal funding, further reimbursement of **Project** expenditures may be denied, the **Project** may be cancelled, the timeline extended or the scope amended by the **Department** either in whole or in part without penalty. Denial of

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further reimbursement, **Project** cancellation, extension or amendment because of an interruption in the appropriated funding is not a default or breach of this agreement by the **Department** nor may such denial, cancellation, extension or amendment give rise to any claim against the **Department**.

7. In the event the **LFUCG** fails to complete the Scope of Work within the time allotted, or at any time the **LFUCG** fails to maintain adequate staff, project delivery systems, or sufficient accounting control, the **Department** reserves the right to cancel further reimbursements related to the **Project** under this agreement. In the event the **Department** denies further reimbursement under this section, the **LFUCG** shall refund all reimbursements made by the **Department** to the **LFUCG** under this agreement.
8. The **LFUCG** shall pay all **Project** expenses and only upon meeting all terms and conditions of this agreement will be eligible to receive Federal reimbursement funding. All charges to the **Project** shall be supported by properly executed invoices, contracts, vouchers, or monthly employment data evidencing in proper detail the nature and propriety of the charge. The **Department** or FHWA may require additional documentation at their discretion.
9. Funding may be used for restoration, repair, construction and other activities eligible under the Surface Transportation Program (STP) as defined within 23 USC 133(b). The **Project** costs referred to in this agreement shall be those costs that adhere to the Detailed Scope of Work and Budget Summary. The **LFUCG** shall follow 2 CFR 225-OMB Circular A-87 “Cost Principles for State, Local and Indian Tribal Governments” or 2 CFR 230-OMB Circular A-122 “Cost Principles for Non-Profit Organizations” or 2 CFR 220-OMB Circular A-21 “Cost Principles for Educational Institutions.”

Reimbursement by the **Department** shall not be provided to the **LFUCG** if any requirements are not met. In order to obtain reimbursement for said **Project**, the **LFUCG** shall submit

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properly supported documents with all reimbursement requests for any materials, equipment, and labor used on the **Project** to the **Department's** District 7 Office in Lexington. The **LFUCG** may submit to the **Department's** District 7 Office in Lexington current billings reflecting the actual cost of work incurred during any given work period, which will be paid within a reasonable time after receipt by the **Department**; however, in no event is the **LFUCG** to submit billings for work performed for less than a thirty (30) day period. The **Department** shall reimburse the **LFUCG** upon request each month by the **LFUCG** providing proof of payment through appropriate documentation, which includes but is not limited to the following: work progress completed to date, expenses, cancelled checks, bank statements, and employment reports.

The **LFUCG** shall also submit with the request for reimbursement a formal letter that certifies that the work shown on the invoice has been performed in accordance with the terms of this agreement and approved plans and specifications, that the charge was accomplished at the location agreed herein by both parties on a publicly maintained facility, that the material, equipment, or labor cost(s) shown are verified and are true and correct, 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 for the **LFUCG** in responsible charge.

10. This Federal-aid project is subject to the reporting requirements contained in the Federal Funding Accountability and Transparency Act (Transparency Act) of 2006 and its associated amendments. The Transparency Act requires entities receiving Federal awards such as Federal contracts, sub-contracts, grants and sub-grants, to disclose certain information. This Agreement is subject to 31 USC 6101, 2 CFR 170, and 2 CFR Subtitle A, Chapter I and Part 25. The **Department** will not execute this Agreement unless the **LFUCG** completes the Transparency Act Reporting Form.

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The **LFUCG** shall maintain and comply with all reporting requirements outlined by the **Department** and FHWA, including the submittal of progress reports detailing the status of the **Project**. The **LFUCG** shall provide invoices for expenses that match the approved Detailed Scope of Work and Budget Summary submitted to the **Department**. The making, recording and reporting of any purchases shall be undertaken in accordance with the requirements of KRS 45A. All checks, invoices, contract records, vouchers, orders, and purchasing documents pertaining in whole or in part to the **Project** shall be clearly identified and readily accessible. The **LFUCG** shall permit the **Department** and/or FHWA to conduct periodic site visits to ascertain compliance with federal and state laws and regulations. The **LFUCG** shall maintain financial records for three years after project completion, Final Acceptance and final reimbursement in accordance with 49 CFR Part 18.42.

11. Environmental Requirements. With the advice and assistance of the **Department**, the **LFUCG** shall ensure that all applicable environmental requirements are met including the preparation of appropriate environmental documentation prepared pursuant to the National Environmental Policy Act (NEPA) of 1969 addressing the social and environmental effects of the proposed **Project**. Adequate resources must be devoted to ensuring that all applicable environmental reviews under NEPA are completed on an expeditious basis and that the shortest existing applicable process under NEPA shall be utilized. Compliance with NEPA, Section 4(f) of 49 USC 303, Section 106 of the National Historic Preservation Act, Sections 401 and 404 of the Clean Water Act, Section 7 of the Endangered Species Act, and any other applicable environmental laws and regulations must be received to permit funding authorization by the FHWA. Specifically, Phase I design activities will be allowed to proceed without a valid environmental document; however, the commencement of any Phase II design, right-of-way acquisition, utility relocation, or construction activities shall not be permitted prior to approval of the appropriate environmental document. Federal funding will only be available for the reimbursement of construction costs upon the successful completion of all design activities.

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12. Land Acquisition. Should the **Project** require the acquisition of any interest in real property by the **LFUCG** and the **LFUCG** does not have the authority to acquire property by eminent domain, the applicability of the Uniform Relocation Assistance (URA) and Real Property Acquisitions Policies Act, 49 CFR Part 24 (as amended) shall be limited to the following requirements: (1) Prior to making an offer for the property, the property owner shall be advised in writing that should negotiations fail to result in an amicable agreement, the **LFUCG** will not be able to acquire the property, and (2) The property owner shall be informed in writing of what the **LFUCG** believes to be the fair market value of the property based upon a fair market value appraisal approved prior to any offer by the **Department**, Division of Right of Way and Utilities.

The **LFUCG** shall ensure that all real property acquisition, relocation assistance, and property management are completed in a fair, equitable and approved manner consistent with all federal and state laws and regulations governing the acquisition of real property for public use using federal highway funding. (1) The **LFUCG** shall either adopt in writing the **Department's** written Policies and Procedures for Right of Way Acquisition and Relocation Assistance or present its own written Policies and Procedures for approval by the **Department's** Division of Right of Way and Utilities and, if applicable, the FHWA. (2) The **LFUCG** shall conduct all appraisals and appraisal reviews using personnel meeting the **Department's** minimum qualifications and listed on the **Department's** pre-qualified appraiser and reviewer list. (3) If the **LFUCG** chooses to use an acquisition consultant on all or any portion of the **Project**, the selection of the consultant shall be in accordance with the **Department's** Division of Right of Way Guidance Manual. (4) All appraisals must be reviewed and approved by the **Department's** Central Office review appraisers, failure to do so will result in the **Project** being ineligible for federal funding reimbursement. (5) The **LFUCG** shall provide property management in accordance with approved procedures and be responsible for the abatement of any asbestos containing materials and removal of



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contaminated soils pursuant to applicable federal and state laws and regulations. (6) The **LFUCG** shall provide the **Department** and, when applicable, FHWA, necessary assurance that all real property has been acquired and all displaced individuals, businesses, non-profit organizations and farms have been offered relocation assistance according to applicable federal and state laws and regulations. (7) The **LFUCG** shall provide the **Department**, and when applicable, FHWA, necessary documentation for review and approval at various stages of the acquisition process, as described in the **Department's** Right of Way Relocation Assistance Guidance Manual.

The **Department** shall: (1) Review all appraisal reports to ensure proper appraisal practice and procedures as well as compliance with federal and state laws and regulations, and (2) Approve the final value conclusion through the Director, Division of Right of Way and Utilities.

The **LFUCG** shall provide to the **Department** the following information on each parcel of real property to be acquired:

- A title opinion for the Property,
- An accurate legal description and plat delineating the shape and location of the Property to be acquired,
- The total area of the Property,
- The Property interest to be acquired

Should the acquisition of real property result in the displacement of a tenant-occupant, such displacement shall be subject to the requirements of the URA, as set out in implementing regulations 49 CFR Part 24. A displaced tenant shall be eligible for moving expenses and any other relocation expenses for which they might qualify.

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13. Restrictive Easements. The **LFUCG** acknowledges that the **Department** will require the placement of a restrictive easement approved by and in favor of the **Department** in the chain of title of any real property acquired or improved pursuant to the **Project** in favor of the **Department**. If the Owner of any real property acquired or improved pursuant to the **Project** is different from the **Department**, then the Owner shall sign and be made a party to this agreement and the Owner hereby acknowledges, covenants and consents to the placement of a restrictive easement for perpetual maintenance of the property acquired or improved pursuant to the **Project** in the chain of title in favor of the **Department** prior to final reimbursement by the **Department**.
14. General Utility Coordination. The party obligated to execute the project development portion of the **Project** shall be charged with the identification of utility facilities in conflict with the **Project**, the execution of a remedy for said conflict, and oversight of the execution. The **Department** encourages dutiful consideration of utility avoidance via design considerations. When avoidance is impossible, uneconomical or otherwise invalid, utility relocation is an acceptable remedy for conflict. All work related to the **Project** shall be done in accordance with the **Department's** Standards, Specifications, Standard Drawings, and Utilities and Rails Manual. Correspondence pertaining to utility coordination may affect both the project development and construction of the **Project**. Therefore any and all correspondence regarding utility coordination activities must be provided to both contracted parties. The **Department's** representative on these matters is the District Office Utility Supervisor.

The project development party shall provide the following upon full execution of the utility relocation for the **Project**: 3 sets of as-built plans for each utility company that completes facility relocation on the project prior to the construction letting, a utility impact note defining the utilities identified in the **Project**, relocations that have been performed, incomplete relocations, and completion schedules for the incomplete work.

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15. Reimbursable Utility Relocations. When conducting a utility relocation, KRS 177.035 and KRS 179.265 determine the necessity of payment on behalf of the utility company in question. When law requires the reimbursement of the work, the cost of constructing the most economical type of facilities that satisfactorily meet the service requirements of the former facilities is negotiated, and an agreement is executed between the project development party and the utility company. Utility relocations shall be designed by the utility company and shown on the **Project's** survey and general plan sheets. The impacted utility company, with its regular construction or maintenance personnel, and/or with an approved contractor or subcontractor, will furnish all engineering, administration, labor, and materials to make and complete all necessary adjustments of its facilities to accommodate the **Project**. The project development party shall inspect the relocation and document the proper installation of the facilities. If it is determined that the utility relocation work is best conducted within the **Project's** construction contract, the party responsible for the **Project** construction will negotiate, execute the agreement, and inspect the relocation work, under direct advisement of the project development party. If a conflict of interest arises between the obligated party and a utility company, the unobligated party shall intercede to provide the utility coordination.
  
16. Non-Reimbursable Utility Relocations. When KRS 179.265 indicates the work is not reimbursable, the utility company shall design their relocation plan on the **Project's** survey and general plan sheets. The project development party shall perform a review and approval of the relocation per agency policy and procedure. The project development party shall inspect the relocation and document the proper installation of the facilities. If a conflict of interest arises between the obligated party and a utility company, the unobligated party shall intercede to provide the utility coordination.
  
17. General Railroad Coordination. The party obligated to execute the project development portion of the **Project** shall be charged with any railroad coordination for the **Project**, the

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execution of a contract with the impacted railroad and oversight of the execution. All work related to the **Project** shall be done in accordance with the **Department's** Standards, Specifications, Standard Drawings, and Utilities and Rails Manual. Correspondence pertaining to railroad coordination may impact both the project development and construction of the **Project**. Therefore any and all correspondence regarding railroad coordination activities must be provided to both contracted parties. The **Department's** representative in such matter is the Central Office Rails Coordinator.

The project development party shall provide the following with the bid package for the **Project**: a railroad coordination note defining any and all special project terms and conditions due to the involvement of the railroad company and an estimate of the **Project** expenses for railroad coordination.

18. Permits and Licenses. The **LFUCG** is responsible for obtaining all permits and licenses required to initiate, perform and complete all phases of the **Project** in an appropriate and timely manner. Concurrence must be obtained by the **LFUCG** through the **Department's** District 7 Chief District Engineer in Lexington prior to the awarding of any contract for work or materials to be used on this **Project**. Per the CABINET/FHWA Stewardship Agreement, the **Project** may require more involvement from the FHWA.
  
19. Design and Construction Standards. All Federal and State design and construction criteria for the type of work shall be followed, including but not limited to 23 CFR 625, the **Department's** Highway Design Manual, the **Department's** Standard Drawings, the **Department's** Standard Specifications for Road and Bridge Construction, the **Department's** Drainage Manual, the **Department's** Structural Design Manual, the American Association of State Highway Transportation Officials' (AASHTO) "Policy on Geometric Design of Highways and Streets", and the FHWA Manual on Uniform Traffic Control Devices (MUTCD). All work performed shall be in accordance with the **Department's** Standard

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Specifications for Road and Bridge Construction, edition 2008 as revised, and as provided in Subsection 105.01 of said Specifications. All materials furnished shall be in accordance with Subsection 106 of said Specifications to include all **Department** List of Approved Materials. These standards, specifications, and criteria are incorporated in this agreement by this reference.

20. Engineering Services. The **LFUCG** shall be responsible for all **Project** design activities, including to fully develop the **Project** as defined within the body of this agreement, resulting in the preparation of all plans, specifications, notes, and a final estimate for concurrence by the **Department**. The **LFUCG** shall complete all design work either with the **LFUCG**'s staff, or through selection based on qualifications for a consultant that is either licensed and pre-qualified to do work for the **Department** or a licensed Professional Engineer registered in the Commonwealth of Kentucky that demonstrates sufficient experience and knowledge in the type of work and receives the approval of the **Department**'s District 7 Chief District Engineer in Lexington. All design work to be contracted must comply with all legal advertisement and Federal selection requirements including, but not limited to, 23 CFR 635 and the Model Procurement Code provisions of KRS 45A and KRS 424. The **LFUCG** shall submit and obtain concurrences to the **Department**'s District 7 Chief District Engineer in Lexington final design plans, specifications, and a total estimate prior to any construction.

21. Contractor Procurement. The **LFUCG** shall be responsible for all **Project** construction activities as defined within the body of this agreement, which may be completed either by the **LFUCG**'s staff or by a contractor. If the **LFUCG** intends to use contractor services, the **LFUCG** shall be responsible for the advertisement, opening of bids, selection, and contracting for contractor services for the **Project**, with the concurrence of the **Department**, in accordance with the Federal contract provisions listed in FHWA Form 1273 which take precedence over the Kentucky Model Procurement Code provisions KRS 45A.343 and KRS 45A.345-460, as well as KRS 424, 23 CFR 635, 23 USC 112. Contractors and

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subcontractors must be pre-qualified by the **Department** for the type of work prior to be awarded a contract. If no **Department** prequalification category exists, a contractor or subcontractor must receive the approval of the **Department** prior to working on the **Project**. The contractor affirms that it is properly authorized under the laws of the Commonwealth of Kentucky to conduct business in this state and will remain in good standing to do business in the Commonwealth of Kentucky for the duration of any contract awarded. The contractor shall maintain certification of authority to conduct business in the Commonwealth of Kentucky during the term of this contract. Such registration is obtained from the Secretary of State, who will also provide the certification thereof.

The **LFUCG** shall prepare an independent engineer's estimate in accordance with 23 CFR 630, Subpart B to compare against the contractors' bids for reasonableness. The **LFUCG** shall thoroughly review all bids and obtain concurrence from the **Department** prior to the award or the rejection of any contract of bids for work or materials to be used on this **Project**. Factors that should be considered in reviewing submitted bids are: a comparison of the bids against the engineer's estimate, the number of bids submitted, the distribution or range of bids received, the geographic location of bidders, any potential savings from readvertising the **Project**, a comparison of bids against other recent bids for the same item or service, the urgency of the **Project**, the number of times previously advertised or contracted for, the current market conditions, a comparison of unit bids versus engineer's estimate unit bids, the funding available. Determining whether the bids received are adequate involves considering any critical safety improvements, emergency repair or replacement of damaged facilities, the opening of otherwise completed facilities to traffic, furthering a phased construction schedule, or any other factors deemed important by the **Department** or FHWA. Specific Federal requirements defined within 23 CFR 635 require that the award be made to the lowest responsive bidder meeting the criteria of responsibility established by the **Department**.

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22. Contract Administration and Inspection. The **LFUCG** shall be responsible for all aspects of administration, measuring, testing, and inspections to ensure the materials and construction work meets **Department** specifications and federal quality assurance specifications referenced in 23 CFR 637 and 23 CFR 635.105 (a) or (b). This includes providing daily, on-site inspection of the contractor's and subcontractor's work activities and processing all of the paper work associated with the construction contract, including any change orders. The **LFUCG** must receive prior written **Department** approval for all change orders, but such approval shall not increase the funding obligated to the **LFUCG** under this agreement or otherwise.

The **LFUCG** shall use the **Department's** 2009 Regional Highway and Bridge Construction Inspection advertisement for construction inspectors, or must receive **Department** approval to submit an Alternative Construction Inspection Plan. If the **LFUCG** does not have adequate staff to perform this work, the **LFUCG** may hire a consultant or enter into an agreement with another governmental agency to provide these services. The **Department** must review and approve the Construction Engineering and Inspection agreement and the agreement with the service provider must be submitted to FHWA for concurrence. If the **LFUCG** elects to hire a consultant, the **LFUCG** must ensure that the consultant staff is competent in construction inspection and performs all work under the direct supervision of a registered professional engineer or architect licensed in the Commonwealth of Kentucky. The use of a consultant does not relieve the **LFUCG** of ultimate responsibility for the proper administration and inspection of the construction. If a consultant is used to provide inspection services, the **LFUCG** must also provide an appropriately certified and licensed **LFUCG** employee to be in responsible charge of the **Project** oversee the inspections.

When an Alternative Construction Inspection Plan is submitted, the **LFUCG** must ensure sufficient quantity and quality are delivered and that proper inspection documentation is maintained. The Alternative Construction Inspection Plan must be performed under the

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supervision of a Professional Engineer licensed in the state of Kentucky, include credentials and experience of inspectors, indicate testing consistent with the **Department's** Sampling Manual, detail the frequency, who will be responsible, what will be included in reports, and coordinate with the **Department's** construction inspector.

The **Department** and/or the FHWA shall have access to the **Project** area and may conduct an announced or unannounced field review of the **Project** at any time. This field review is intended to verify status of the **Project**, performance of the contractor, adequacy of the **LFUCG** oversight, conformance with all laws, regulations, and policies applicable to the Federal-aid Highway Program, and provide assistance to the **LFUCG** where necessary.

23. Contract Completion. The **LFUCG** is responsible for ensuring that all **Project** activities have been completed and are responsible for providing all of the necessary paperwork as required by the contracts. This involves conducting a pre-audit of all contract items and associated paperwork. When complete, the **LFUCG's** project engineer in responsible charge of the **Project** shall notify the **Department** the **Project** is ready for final inspection. If construction is a part of this **Project**, the **LFUCG** will conduct a field inspection to verify completion of the work in substantial conformance with the agreement. When both the **LFUCG** and the **Department** accept the field work as complete, the **LFUCG's** project manager shall certify the **Project** was constructed in accordance with the plans and specifications and that all funding authorized on this **Project** has been used to reimburse for materials, equipment, or labor as intended and at the location agreed herein by both parties. The **Department's** Chief District Engineer in Lexington will complete a Final Acceptance Report.

Within thirty (30) days upon receipt of the **Department's** Final Acceptance Report, the **LFUCG** will issue the final payment to the contractor and proof of payment to the **Department** with an official Release of Contractor form for signature. Upon receipt of the



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contractor's agreement to the Release of Contractor paperwork, the **LFUCG** will transmit the Final Estimate and Release to the **Department**. The **Department** will then submit a Final Voucher request to the FHWA Financial Management Team with copies of the **Department's** Final Acceptance Report and signed Final Release of Contractor. Approval of the Final Voucher will constitute Final Acceptance by the FHWA. In accordance with 49 CFR 18.42, the **LFUCG** shall maintain all records of materials, equipment, and labor costs for this **Project** for three (3) years after final payment and the **Department** will retain records for three (3) years on site and an additional five (5) years in Archives.

24. Maintenance as Public Facilities. The **LFUCG** agrees to maintain in an acceptable condition all facilities improved by the **Project** to the condition existing at the time of the Final Acceptance Report for a public purpose in perpetuity. In addition, any applicable landscaping in any project shall be maintained in an acceptable condition to include mowing, trimming, or other maintenance in perpetuity. In the event that the property is not maintained as a public facility, the **LFUCG** shall reimburse the **Department** for all proceeds provided for in this **Project** including any applicable interest, unless such change in use is approved in writing by the **Department** and FHWA, if applicable. The **LFUCG** shall obtain concurrence from the **Department's** District 7 Chief District Engineer in Lexington of a Maintenance Plan for any facilities to be constructed (on a phase-by-phase basis, as the design of each phase is completed), prior to the awarding of any contract to construct such facilities.

25. Davis-Bacon and Related Acts. The 1931 Davis-Bacon Act (prevailing Federal wage) requires the **LFUCG** of all Federal-aid construction projects to comply with contractor and subcontractor payment rates and fringe benefits as determined by the Secretary of Labor for corresponding classes of laborers and mechanics engaged on similar construction, alteration, and/or repair of public buildings or public works, painting, or decorating projects in the locality. Specific wage rates shall be included in the construction contract between the

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**LFUCG** and the contractor, which must also include a contract provision that overrides the general applicability provisions in Form FHWA-1273, Sections IV and V.

26. The Contract Work Hours and Safety Standards Act. During the construction of the **Project**, the **LFUCG** shall comply with the Contract Work Hours and Safety Standards Act which contains weekly (after 40 hours) overtime pay requirements and applies to most Federal contracts which may require or involve the employment of laborers and mechanics, including watchmen and guards. Section 107 of the Act provides health and safety standards on covered construction work which are administered by the Occupational Safety and Health Administration (OSHA). The **LFUCG** shall refer to the Contract Work Hours and Safety Standards Act for the requirements under this provision.
27. Reduction in Contract Worker Hours. The Kentucky General Assembly may allow for a reduction in contract worker hours in conjunction with a budget balancing measure for some professional and non-professional service contracts. If under such authority the agency is required by Executive Order or otherwise to reduce contract hours, the contract will be reduced by the amount specified in that document.
28. The Copeland "Anti-Kickback" Act. The **LFUCG** shall comply with the "Anti-Kickback" section of the Copeland Act, which makes it punishable to induce any person working on a Federally funded or assisted construction project to "give up any part of the compensation to which he is entitled under his contract of employment." The **LFUCG** shall refer to the Copeland Act for the requirements under this provision.
29. Title VI - Civil Rights Act of 1964. The **LFUCG** shall comply with all requirements imposed by Title VI of the Civil Rights Act of 1964 (78 Stat. 252), the Regulations of the United States Department of Transportation issued thereunder (CFR Title 49, Subtitle A, Part 21), and the assurance by the **LFUCG** pursuant thereto. Title VI prohibits discrimination on

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the basis of race, color, national origin, disability, gender, and age in all programs or activities of any **LFUCG** of Federal assistance.

30. Equal Employment Opportunity. In connection with the execution of this agreement, the **LFUCG** shall take affirmative action and not discriminate against any employee or applicant for employment to ensure that applicants are employed, and that employees are fairly treated during their employment, without regard to their race, religion, color, sex, national origin, age, or disability. Such actions shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection of training including apprenticeship. The **LFUCG** shall incorporate the foregoing requirements of this paragraph in all subcontracts for services covered by this agreement.

31. Disadvantaged Business Enterprise (DBE) Requirements. An applicant DBE firm must be given consideration for participation in the **Project** and a DBE goal may be set by the **LFUCG** for work on this **Project**. If a goal is established, the **Department** shall review and approve the DBE goal based on **Department** processes and procedures. Should a DBE goal be established, any participating DBE firm must be certified as a DBE firm and be prequalified with the **Department**. The **LFUCG** agrees to comply with the DBE Requirements contained within 23 CFR 635 Subpart A, Section 1101(b) of Public Law 109-59, Chapter 3 of Title 49 USC and 49 CFR Part 26 to ensure equal opportunity to socially and economically disadvantaged small businesses.

Assurance. The contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this agreement. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of contracts assisted by the United States Department of Transportation. Failure by the contractor to carry out these requirements is a material breach of this contract, which may

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result in the termination of this contract or such other allowable remedy the **Department** deems appropriate. Each contract signed with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include this provision.

DBE Prompt Payment Requirement. The **LFUCG** must abide by 49 CFR Part 26.29 with regard to prompt payment mechanisms and retainage payment. If applicable, all contractors must be paid within ten (10) working days after the **LFUCG** has been paid by the **Department** for work performed or services delivered. No recipient or contractor may withhold retainage on any subcontract on this **Project**.

32. Prohibited Interest. No member, officer, or employee of the **Department** or the **LFUCG** during his tenure or for one (1) year thereafter shall have any financial interest, direct or indirect, in this agreement or the proceeds thereof as identified in KRS 45A.340. No member, officer, or employee of the **Department** or **LFUCG** shall collude or lobby on behalf of this **Project** without penalty, including but not limited to suspension or debarment.
33. Covenant Against Contingent Fees. The **LFUCG** warrants that no person, elected official, selling agency or other organization has been employed or retained to solicit or secure this agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. For breach or violation of this warranty, the **Department** shall have the right to annul this agreement without liability or, in its discretion, to deduct from the compensation, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.
34. Interest of Members of or Delegates to Congress. No funding has been or will be paid to a member or delegate to the Congress of the United States in connection with the awarding of this Federal contract. Nor shall any member of or delegate to the Congress of the United States receive any benefit arising out of this Federal contract.

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35. Standards for the Treatment of Historic Properties. Historic preservation projects shall meet applicable Secretary of the Interior's Standards for the Treatment of Historic Properties, the Standards and Guidelines for Archeology and Historic Preservation, and all other applicable Federal or State historic property requirements prior to the payment of any monies under this agreement.
36. Americans with Disabilities Act. The **LFUCG** agrees to comply with the provisions of the Americans with Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973, P.L. 93-112, and other applicable Federal regulations relating hereto, issued by the U.S. Department of Transportation. ADA prohibits discrimination against otherwise qualified individuals under any program or activity receiving Federal financial assistance covered by this agreement and imposes requirements that affect the design, construction, and maintenance of all transportation projects, to provide access to all facilities.
37. Applicable Laws. This agreement shall be in accordance with the laws of the United States Department of Transportation, Federal Highway Administration, the United States of America, and the Commonwealth of Kentucky.
38. Hold Harmless Clause. To the extent permitted by law, the **LFUCG** shall indemnify and hold harmless the FHWA and the **Department** and all of its officers, agents, and employees from all suits, actions, or claims of any character arising from any injuries, payments or damages received or claimed by any person, persons, or property resulting from implementation of any phase of the **Project** or occurring on or near the **Project** site.
39. 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 and

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approve all phases of the **Project** and all relevant **Project** data and records, including any audit(s) of the **LFUCG** pertaining to the **Project**.

The U.S. Comptroller General and any representatives shall have authority to examine any records of the contractor, any subcontractors, the **Department**, or the **LFUCG** administering this **Project** that directly pertain to, and involve transactions relating to, the contract or subcontract; and shall have authority to interview any officer or employee of the contractor, any subcontractors, the **Department**, or the **LFUCG** administering this **Project**, regarding such transactions. The Inspector General and any representatives shall have authority to examine any records or interview any employee or officers working on this **Project**. The contractor is advised that representatives of the Inspector General have the authority to examine any record and interview any employee or officer of the contractor, any subcontractor, or other firms working on this **Project**.

The **LFUCG** hereby acknowledges its duty to the **Department** to determine whether it is subject to the Single Audit Act of 1984, P.L. 98-502, and the Single Audit Act Amendments of 1996, P.L. 104-156. If the **LFUCG** has expended more than \$500,000 in federal funding from all sources in the **LFUCG**'s fiscal year, the **LFUCG** shall provide the **Department** copies of their OMB Circular A-133 "Audits of States, Local Governments and Non-Profit Organizations" audit reports within 9 months of their fiscal year end. The **LFUCG** shall provide the **Department** with copies of any audits or reviews prepared as a result of that Act.

40. 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

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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.

41. Campaign Finance. The **LFUCG** shall certify that the contractor swears under the penalty of perjury, as provided by KRS 523.020, that neither he/she nor the entity which he/she represents has knowingly violated any provisions of the campaign finance laws of the Commonwealth, and that the award of a contract to him/her or the entity which he/she represents will not violate any provisions of the campaign finance laws of the Commonwealth.
  
42. Violation of tax and employment laws. KRS 45A.485 requires the County to certify that all contractors shall reveal to the **Department**, any final determination of a violation by the contractor within the previous five (5) year period of the provisions of KRS chapters 136, 139, 141, 337, 338, 341, and 342. These statutes relate to the state sales and use tax, corporate and utility tax, income tax, wages and hours laws, occupational safety and health laws, unemployment insurance laws, and workers compensation insurance laws, respectively.

The County shall certify that all contractors agree to be in continuous compliance with the provisions of those statutes which apply to the contractor's operations. Failure to reveal a final determination or failure to comply with the above statutes for the duration of the contract, shall be grounds for the County's cancellation of the contract and the contractor's disqualification from eligibility for future state contracts for a period of two (2) years.

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43. Personal Service Contracts and Memoranda of Agreement. If this agreement comes under the purview of KRS 45A.690 to 45A.725, the following apply:

- Payments on personal service contracts and memoranda of agreement shall not be authorized for services rendered after government contract review committee disapproval, unless the decision of the committee is overridden by the secretary of the Finance and Administration cabinet or agency head, if the agency has been granted delegation authority by the secretary.
- All memoranda of agreement are not effective until the secretary of the Finance and Administration Cabinet or his authorized designee has approved the contract and until the contract has been submitted to the government contract review committee. However, memoranda of agreement \$50,000 or less are exempt from review by the committee and need only be filed with the committee within 30 days of their effective date for informational purposes only as provided under KRS 45A.700.

44. Disputes. Any dispute concerning a question of fact in connection with the work, not disposed of by agreement between the **LFUCG** and the **Department**, 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. Regulations concerning any claims to be filed by a contractor are referenced in 23 CFR 635.124.

45. Agreement Change. Any proposed change to the Scope of Work or time extension to this agreement shall comply with 23 CFR 635.120 and 635.121 and shall be evidenced in writing at the mutual consent of the **LFUCG** and the **Department**.

46. Cancellation. Either party may cancel the contract at any time for cause or may cancel without cause on 30 days' written notice.



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The **Department** reserves the right to cancel all reimbursements under this agreement at any time deemed to be in the best interest of the **Department** by giving thirty (30) days written notice of such cancellation to the **LFUCG**. If reimbursement under this agreement is canceled under this section by reason other than violation of this agreement or any applicable law by the **LFUCG**, its agents, employees and contractors, the **Department** shall reimburse the **LFUCG** according to the terms hereof for all expenses incurred under this agreement to the date of such cancellation of reimbursement. The **LFUCG** may seek to cancel its obligations under this agreement at any time deemed to be in the best interest of the **LFUCG** by giving thirty (30) days written notice of such request to the **Department**. If the **Department** agrees to allow the **LFUCG** to cancel the **Project** or cancel its obligations under this agreement, the **LFUCG** shall reimburse the **Department** for all federal funding reimbursements made under this agreement.

47. All other terms and conditions of the original agreement executed on August 29, 2003 (C-03328686), Supplemental Agreement No. 1 executed on June 25, 2007, Supplemental Agreement No. 2 executed on March 12, 2009, and Supplement Agreement No. 3 executed on November 3, 2010 shall remain in effect 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.

LEXINGTON-FAYETTE URBAN  
COUNTY GOVERNMENT

COMMONWEALTH OF KENTUCKY  
TRANSPORTATION CABINET

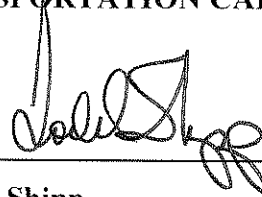
\_\_\_\_\_  
Jim Gray  
Mayor

\_\_\_\_\_  
Michael W. Hancock  
Secretary

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVED AS TO FORM & LEGALITY  
TRANSPORTATION CABINET



\_\_\_\_\_  
Todd Shipp  
Office of Legal Services

Date: 11/14/12