

AGREEMENT BETWEEN THE
COMMONWEALTH OF KENTUCKY
TRANSPORTATION CABINET
AND THE
LEXINGTON FAYETTE COUNTY URBAN GOVERNMENT
LEGACY TRAIL PHASE III
FEDERAL PROJECT NUMBER STPE 3003 263/ AUTHORIZATION NUMBER 85287
PO2-628-1400005764
\$2,421,700.00

This AGREEMENT is made and entered into by and between the Commonwealth of Kentucky, Transportation Cabinet, hereinafter the "CABINET" and the Lexington Fayette Urban County Government, hereinafter the "RECIPIENT".

WITNESSETH:

WHEREAS, the Federal Highway Administration (FHWA), through the CABINET, has approved up to \$2,121,700.00 in SAFETEA-LU funding for the Legacy Trail Phase III Project hereinafter the "PROJECT", known as Federal Project Number STPE 3003 263 and the applicable Catalog of Federal Domestic Assistance number is 20.205-Highway Planning and Construction,

WHEREAS, the Federal-aid Highway Program is a State Administered Reimbursement Program and the RECIPIENT shall carry out this PROJECT in accordance with applicable Federal and State laws and regulations including all of Title 49 United States Code (USC), Title 23 United States Code (USC), 49 Code of Federal Regulations (CFR), and 23 Code of Federal Regulations (CFR),

WHEREAS, all Federal-aid projects must also specifically comply with the National Environmental Policy Act (NEPA), Section 4(f) of 49 United States Code (USC) 303, Section 106 of the National Historic Preservation Act, Sections 401 and 404 of the Clean Water Act, the Endangered Species Act, and any other applicable environmental laws and regulations,

WHEREAS, all Federal-aid projects must also specifically comply with Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990 (ADA),

WHEREAS, the requirements of the Disadvantaged Business Enterprise (DBE) program, as described in 23 CFR 635 Subpart A and Section 1101(b) of SAFETEA-LU (the Safe, Accountable, Flexible, Efficient Transportation Act: A Legacy for Users), the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act), and the Federal Buy America construction contracts requirements, as spelled out in 23 CFR 635 Subpart D, apply to all Federal and Federal-aid transportation programs,

WHEREAS, the RECIPIENT must comply with applicable CABINET policies and procedures and KRS 177 and KRS 45A, the Kentucky Model Procurement Code (MPC), as it relates to state agencies not local public agencies.

WHEREAS, Federal-aid projects are to serve a public purpose in perpetuity, the RECIPIENT is responsible for maintaining any real property or facilities improved pursuant to the PROJECT in perpetuity on a non-profit basis,

WHEREAS, the RECIPIENT shall refer to the *Federal-Aid Project Development Guide for Local Public Agencies*, hereinafter the "GUIDE", and any future revisions for assistance in complying with this AGREEMENT,

WHEREAS, the RECIPIENT shall outline, undertake, and complete the work as described in the Scope of Work and Budget Summary (Attachment A) in accordance with the terms and conditions of this AGREEMENT, and consistent with the FHWA Contract Administration Manual, the CABINET/FHWA Stewardship Agreement, FHWA Form 1273 (Appendix J of the GUIDE), and all applicable State and Federal laws and regulations,

WHEREAS, the RECIPIENT shall demonstrate and shall maintain adequate staff, provide delivery systems, and sufficient accounting control to complete the PROJECT in accordance with all Federal and State laws and regulations addressed herein, and

WHEREAS, the RECIPIENT has agreed to provide a minimum of 20% matching funds and to accept responsibility for all administration, staffing, maintenance and operation costs for the Project as identified under this AGREEMENT;

NOW THEREFORE, in consideration of the mutual covenants and agreements herein set forth, the CABINET and the RECIPIENT hereby agree as follows:

Section 1. Scope of Work & Budget Summary. It is understood that the PROJECT will enhance the transportation system as further described in the Scope of Work and Budget Summary (Attachment A, attached hereto and made a part of this AGREEMENT). In the Scope of Work and Budget Summary, the RECIPIENT is to include detailed expectations, individual activities, estimates, and a schedule with milestones which the CABINET will use as checkpoints for the PROJECT. Further, the RECIPIENT is to define the roles, responsibilities, and authorities of the various entities and/or organizational units with regard to the project development and project delivery processes specific to this PROJECT in the Scope of Work and Budget Summary.

The RECIPIENT shall identify and provide a point of contact, including adequate contact information, for who shall be in responsible charge to manage this PROJECT on the RECIPIENT's behalf, submit the Scope of Work and Budget Summary to the CABINET, and be responsible for ensuring that the RECIPIENT adheres to all terms and conditions of this AGREEMENT. The RECIPIENT shall have final design plans, specifications, and a total estimate prepared by a Professional Engineer licensed to practice in the Commonwealth of Kentucky and approved by the CABINET prior to any construction. The Project Development Checklist (LPA-PDC) (Appendix G of the GUIDE) shall be submitted by the RECIPIENT and certified by the CABINET prior to construction.

Section 2. Effective Date of Agreement and Term of Eligible Reimbursement. It is understood that the effective date of this AGREEMENT is the date the AGREEMENT is signed by the Secretary of the CABINET. After execution of the AGREEMENT, the CABINET will return an original AGREEMENT to the RECIPIENT and issue a Notice to Proceed to begin work on a particular Phase of the PROJECT. Expenditures made prior to the effective date of the AGREEMENT and before the Notice To Proceed for the particular Phase covering the expenditure shall not be eligible for reimbursement. The Term of Eligible Reimbursement under this AGREEMENT shall be three (3) years from the date of its execution

unless that Term is extended or amended by written agreement in accordance with the provisions of 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 RECIPIENT 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. If the PROJECT cannot be completed during the Term of Eligible Reimbursement under this AGREEMENT, the RECIPIENT may request from the Administering Office a contract extension for a period of time not to exceed one (1) calendar year.

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 CABINET either in whole or in part without penalty. Denial of 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 CABINET nor may such denial, cancellation, extension or amendment give rise to any claim against the CABINET.

Section 3. Duration of Project. It is understood and agreed by the parties hereto that the Scope of Work shall be completed within the period set forth herein under Section 2. In the event the RECIPIENT fails to perform the Scope of Work within the time allotted, or at any time the RECIPIENT fails to maintain adequate staff, project delivery systems, or sufficient accounting control, the CABINET reserves the right to cancel further reimbursements related to the PROJECT under the AGREEMENT. In the event the CABINET denies further reimbursement under this section, the RECIPIENT shall refund all reimbursements made by the CABINET to the RECIPIENT under this AGREEMENT.

Section 4. Project Funding. It is expressly understood that Federal funding for this PROJECT is being provided by the Federal Highway Administration (FHWA) through the CABINET, specifically through the Catalog of Federal Domestic Assistance program number 20.205, Highway Planning and Construction. The Federal share of the total cost of this AGREEMENT shall not exceed \$2,421,700.00 (the amount indicated on Attachment A) unless otherwise approved in writing by the CABINET with the concurrence of FHWA. If any funding available to the CABINET is not used, this funding may be returned to the RECIPIENT for eligible PROJECT costs only upon written agreement of the CABINET. Unless otherwise stated, the funding for the PROJECT shall be authorized in Phases and no reimbursement shall be considered for expenditures made before a Notice to Proceed for that Phase has been received. Reimbursement requests will be considered only for and up to the funding amount and type of work described in the approved Scope of Work and Budget and authorized by the Notice to Proceed for that Phase. The RECIPIENT has agreed to accept up to \$2,421,700.00 in Federal reimbursement funding available as authorized in Phases for eligible PROJECT costs and shall be

responsible for any costs in excess of \$2,421,700.00 that are necessary for completion of the approved Scope of Work and any authorized changes to the PROJECT.

The RECIPIENT 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 CABINET or FHWA may require additional documentation at their discretion.

Section 5. Allowable Costs. 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). Funding may also be used for passenger and freight rail transportation and port infrastructure projects eligible for assistance under subsection 23 USC 601(a)(8). The PROJECT costs referred to in this AGREEMENT shall be those costs shown on the Work Plan (Attachment A) and submitted each month to the CABINET on the Office of Local Programs Reimbursement Request Form. The RECIPIENT 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."

The RECIPIENT is responsible for adhering to all Federal and State laws and regulations listed in this AGREEMENT and all documents referred to herein. Reimbursement by the CABINET shall not be provided to the RECIPIENT if any requirements listed within 23 CFR 123 are not met. The CABINET shall reimburse the RECIPIENT upon request by the RECIPIENT 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, verified affidavits, and employment reports. The RECIPIENT 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 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 RECIPIENT in responsible charge.

The RECIPIENT shall provide to the CABINET a pre-approved cost allocation plan prepared in accordance with the standards set forth in the Federal-aid Policy Guide and 49 CFR Part 18 in advance if any indirect costs are to be expended against the PROJECT. Reimbursement by the CABINET is also subject to the provisions of Sections 33 and 36 hereof. The CABINET or FHWA reserves the right to require additional documentation.

Section 6. Reporting and Monitoring. The RECIPIENT shall maintain and comply with all reporting requirements outlined by the CABINET and FHWA. The RECIPIENT shall submit to the Administering Office semi-annual progress reports detailing the status of the PROJECT.

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 CABINET will not execute this Agreement unless the RECIPIENT completes the Transparency Act Reporting Form.

The making, recording and reporting of any purchases shall be undertaken in accordance with the requirements of KRS 45A and applicable federal guidelines. All checks, invoices, contract records, vouchers, orders, purchasing documents, and monthly employment data pertaining in whole or in part to the PROJECT shall be clearly identified and readily accessible. The RECIPIENT shall permit the CABINET and/or FHWA to conduct periodic site visits to ascertain compliance with Federal and State laws and regulations. The RECIPIENT shall maintain financial records for three years after project completion, Final Acceptance and final reimbursement in accordance with 49 CFR Part 18.42.

Section 7. Environmental Requirements. With the advice and assistance of the CABINET, the RECIPIENT 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 funds will be available for reimbursement of construction costs upon successful completion of design activities.

Section 8. Land Acquisition. Should the PROJECT require the acquisition of any interest in real property by the RECIPIENT and the RECIPIENT 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 RECIPIENT will not be able to acquire the property, and (2) The property owner shall be informed in writing of what the RECIPIENT believes to be the fair market value of the property based upon a fair market value appraisal approved prior to any offer by the CABINET, Division of Right of Way and Utilities.

The RECIPIENT shall ensure that all real property acquisition, relocation assistance, and property management are completed in a fair, equitable and approved manner consistent with all State and Federal laws and regulations governing the acquisition of real property for public use using Federal highway funding. (1) The RECIPIENT shall either adopt in writing the CABINET'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 CABINET's Division of Right of Way and Utilities and, if applicable, the FHWA. (2) The RECIPIENT shall conduct all appraisals and appraisal reviews using personnel meeting the CABINET's minimum qualifications and listed on the CABINET's pre-qualified appraiser and reviewer list. (3) If the RECIPIENT 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 CABINET's Division of Right of Way Guidance Manual. (4) All appraisals must be reviewed and approved by the CABINET's Central Office review appraisers, failure to do so will result in the PROJECT being ineligible for Transportation Enhancement funding reimbursement. (5) The RECIPIENT shall provide property management in accordance with approved procedures and be responsible for the abatement of any asbestos containing materials and removal of contaminated soils pursuant to applicable State and Federal laws and regulations. (6) The RECIPIENT shall provide the CABINET 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 State and Federal laws and regulations. (7) The RECIPIENT shall provide the CABINET, and when applicable, FHWA, necessary documentation for review and approval at various stages of the acquisition process, as described in the CABINET's Right of Way Relocation Assistance Guidance Manual.

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

The RECIPIENT shall provide to the CABINET 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.

Section 9. Restrictive Easements. The RECIPIENT acknowledges that the CABINET will require the placement of a restrictive easement approved by and in favor of the CABINET in the chain of title of any real property acquired or improved pursuant to the PROJECT in favor of the CABINET. If the Owner of any real property acquired or improved pursuant to the PROJECT is different from the RECIPIENT, 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 CABINET prior to final reimbursement by the CABINET.

Section 10. Permits and Licenses. The RECIPIENT 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. Per the CABINET/FHWA Stewardship Agreement, the PROJECT may require more involvement from the FHWA.

Section 11. 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 CABINET's Highway Design Manual, the CABINET's Standard Drawings, the CABINET's Standard Specifications for Road and Bridge Construction, the CABINET's Drainage Manual, the CABINET's Structural Design Manual, the American Association of State Highway Transportation Officials' (AASHTO) "Policy on Geometric Design of Highways and Streets", and the Institute of Transportation Engineers' (ITE) Manual on Uniform Traffic Control Devices (MUTCD). All work performed shall be in accordance with the CABINET's Standard Specifications for Road and Bridge Construction, edition 2012 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 CABINET List of Approved Materials. These standards, specifications, and criteria are incorporated in this AGREEMENT by this reference.

Section 12. Consultant Selection. The RECIPIENT shall be responsible for all PROJECT design activities, which may be completed either by the RECIPIENT's staff or a consultant. If the RECIPIENT selects to perform the design work with internal staff, these costs will be eligible for an in-kind match if pre-approved by the CABINET Administering Office. If the RECIPIENT selects to perform the work through a consultant, the RECIPIENT, with the oversight and approval of the CABINET, shall be responsible for the advertisement, selection, and contracting for consultant engineering and related services for the PROJECT in compliance with the Federal requirements set forth in the Brooks Act, Public Law 92-582, the FHWA policy outlined in 23 CFR 172, CABINET policies and procedures, the CABINET procurement policies, and the Kentucky Model Procurement Code as defined within KRS 45A.730-750. This requires the use of a Qualifications Based Selection (QBS) process for the selection of all engineering and related services. By complying with KRS 45A.730-750, the required Federal provisions of the Brooks Act will be satisfied. All plans and specifications must be prepared by a professional engineer or architect licensed in the Commonwealth of Kentucky and prequalified by the CABINET to

practice the type of work to be done. If no CABINET prequalification category exists, a consultant must receive approval by the CABINET prior to working on the PROJECT.

Section 13. Contractor Procurement. The RECIPIENT shall be responsible for all PROJECT construction activities, which may be completed either by the RECIPIENT's staff or by a contractor. If the RECIPIENT intends to use contractor services, the RECIPIENT shall be responsible for the advertisement, opening of bids, selection, and contracting for contractor services for the PROJECT, with the concurrence of the CABINET, in accordance with the Federal contract provisions listed in FHWA Form 1273 (Attachment D, attached hereto and made a part of this AGREEMENT) 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. Bid proposals must be accepted for a minimum of 21 days from the date of the first advertisement for award. Contractors and subcontractors must be pre-qualified by the CABINET for the type of work prior to being awarded a contract. If no CABINET prequalification category exists, a contractor or subcontractor must receive the approval of the CABINET prior to working on the PROJECT.

The RECIPIENT shall prepare an independent engineer's estimate in accordance with 23 CFR 630, Subpart B to compare against the contractors' bids for reasonableness. The RECIPIENT shall thoroughly review all bids and obtain concurrence from the CABINET 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 re-advertising 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 CABINET 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 CABINET.

Section 14. Contract Administration and Inspection. It is understood that the RECIPIENT shall be responsible for all aspects of administration, testing, and inspections to ensure the materials and construction meet CABINET 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 contractor work activities and prompt processing all of the paperwork associated with the construction contract, including any change orders. The RECIPIENT must receive prior written CABINET approval for all change orders, but such approval shall not increase the funding obligated to the RECIPIENT under this AGREEMENT or otherwise.

The RECIPIENT shall use the CABINET's 2009 Regional Highway and Bridge Construction Inspection advertisement for construction inspectors, or must receive CABINET approval to submit an Alternative Construction Inspection Plan. If the RECIPIENT does not have adequate staff to perform this work, the RECIPIENT may hire a consultant or enter into an agreement with another governmental agency to provide these services. The CABINET 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 RECIPIENT elects to hire a consultant, the RECIPIENT 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 RECIPIENT of ultimate responsibility for the proper administration and inspection of the construction. If a consultant is used to provide inspection services, the RECIPIENT must also provide an appropriately certified and licensed RECIPIENT employee to be in responsible charge of the PROJECT and oversee the inspections.

When an Alternative Construction Inspection Plan is submitted, the RECIPIENT 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 supervision of a Professional Engineer licensed in the State of Kentucky, include credentials and experience of inspectors, indicate testing consistent with the CABINET's Sampling Manual, detail the frequency, who will be responsible, and what will be included in reports, and coordinate with the CABINET's construction inspector.

The CABINET and/or the FHWA may conduct an announced or unannounced field review of the PROJECT at any time. This field review is intended to verify conformance with all laws, regulations, and policies applicable to the Federal-aid Highway Program and provide assistance to the RECIPIENT where necessary.

Section 15. Davis-Bacon and Related Acts. The 1931 Davis-Bacon Act (prevailing Federal wage) requires the RECIPIENT 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.

Section 16. The Contract Work Hours and Safety Standards Act. During the construction of the PROJECT, the RECIPIENT 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 RECIPIENT shall refer to the Contract Work Hours and Safety Standards Act for the requirements under this provision.

Section 17. The Copeland "Anti-Kickback" Act. The RECIPIENT 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 RECIPIENT shall refer to the Copeland Act for the requirements under this provision.

Section 18. Title VI - Civil Rights Act of 1964. The RECIPIENT 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 RECIPIENT pursuant thereto. Title VI prohibits discrimination on the basis of race, color, national origin, disability, gender, and age in all programs or activities of any RECIPIENT of Federal assistance.

Section 19. Equal Employment Opportunity. In connection with the execution of this AGREEMENT, the RECIPIENT 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 RECIPIENT shall incorporate the foregoing requirements of this paragraph in all subcontracts for services covered by this AGREEMENT.

Section 20. Disadvantaged Business Enterprise (DBE) Requirements. An applicant DBE firm must be given consideration for participation in the PROJECT and a DBE goal shall be set by the CABINET for work on the PROJECT. The CABINET shall review and approve the DBE goal based on CABINET processes and procedures. Any participating DBE firm must be certified as a DBE firm and be prequalified with the CABINET. The RECIPIENT 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 result in the termination of this contract or such other allowable remedy the CABINET 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 RECIPIENT 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 RECIPIENT has been paid by the CABINET for work performed or services delivered. No recipient or contractor may withhold retainage on any subcontract on this PROJECT.

Section 21. Prohibited Interest. No member, officer, or employee of the CABINET or the RECIPIENT 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. The CABINET and the RECIPIENT shall comply with the requirements of the Executive Branch Code of Ethics KRS Chapter 11A. No member, officer, or employee of the CABINET or RECIPIENT shall collude or lobby on behalf of this PROJECT without penalty, including but not limited to suspension or debarment.

Section 22. Covenant Against Contingent Fees. The RECIPIENT warrants that no person, 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 CABINET 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.

Section 23. 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.

Section 24. 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.

Section 25. Maintenance as Public Facilities. The RECIPIENT agrees to maintain the facilities in an acceptable condition and for a public purpose in perpetuity and in accordance with the Maintenance Plan (Attachment B, attached hereto and made a part of this AGREEMENT). 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 RECIPIENT shall reimburse the FHWA for all proceeds provided for in this PROJECT including any applicable interest, unless such change in use is approved in writing by the CABINET and FHWA, if applicable.

Section 26. Americans with Disabilities Act. The RECIPIENT 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.

Section 27. 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.

Section 28. Hold Harmless Clause. To the extent permitted by law, the RECIPIENT shall indemnify and hold harmless the FHWA and the CABINET 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.

Section 29. Contract Completion. The RECIPIENT is responsible for ensuring that all PROJECT construction activities have been completed and are responsible for providing all of the necessary paperwork as required by the construction contract. This involves conducting a pre-audit of all contract items and associated paperwork. When complete, the RECIPIENT's project engineer in responsible charge of the PROJECT shall notify the CABINET the PROJECT is ready for final inspection. The RECIPIENT will conduct a field inspection to verify completion of the work in substantial conformance with the AGREEMENT. When both the RECIPIENT and the CABINET accept the field work as complete, the RECIPIENT's project manager shall certify the PROJECT was constructed in accordance with the plans and specifications. The CABINET will complete a Final Acceptance Report.

Upon receipt of the CABINET's Final Acceptance Report, the RECIPIENT will issue the final payment to the contractor with an official Release of Contractor form for signature. Upon receipt of the contractor's agreement to the Release of Contractor paperwork, the RECIPIENT will transmit the Final Estimate and Release to the CABINET. The CABINET will then submit a Final Voucher request to the FHWA Financial Management Team with copies of the CABINET'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 RECIPIENT shall maintain all PROJECT records for three (3) years after final payment and the CABINET will retain records for three (3) years on site and an additional five (5) years in Archives.

Section 30. Audit and Inspection. The RECIPIENT, contractor and any subcontractors shall permit the CABINET, the Comptroller General of the United States and the Secretary of the United States Department of Transportation, or their authorized representatives, to inspect and approve all phases of the PROJECT and all relevant PROJECT data and records, including any audit(s) of the RECIPIENT pertaining to the PROJECT.

The RECIPIENT hereby acknowledges its duty to the CABINET 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. The RECIPIENT 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." If the RECIPIENT has expended more than \$500,000 in Federal funding from all sources in the RECIPIENT's fiscal year, the

RECIPIENT shall provide the CABINET 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 RECIPIENT shall provide the CABINET with copies of any audits or reviews prepared as a result of that Act.

The RECIPIENT 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. Furthermore, any of the contractor's books, documents, papers, records or other evidence provided to the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, or the Legislative Research Commission which are directly pertinent to the AGREEMENT shall be subject to public disclosure regardless of the proprietary nature of the information, unless specific information is identified and exempted and agreed to by the Secretary of the Finance and Administration Cabinet as meeting the provisions of KRS 61.878(1)(c) prior to the execution of the AGREEMENT. The Secretary of the Finance and Administration Cabinet shall not restrict the public release of any information, which would otherwise be subject to public release if a State government agency were providing the service.

Section 31. Campaign Finance. The RECIPIENT 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.

Section 32. Violations. Pursuant to KRS 45A.485, the RECIPIENT shall certify that all contractors shall reveal to the CABINET any final determination of a violation within the previous five (5) year period pursuant to KRS Chapter 139, 136, 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 law, unemployment compensation law, and workers compensation insurance law, respectively.

The RECIPIENT shall certify that all contractors agree to be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342 for the duration of this AGREEMENT. Failure to reveal a final determination of a violation of the referenced statutes or to comply with these statutes for the duration of this AGREEMENT shall be grounds for the cancellation of the contract or subcontract and disqualification of the contractor from eligibility for future State contracts for a period of two (2) years.

Section 33. Personal Service Contracts and Memoranda of Agreement. If this AGREEMENT comes under the purview of KRS 45A.690 - 45A.725, payments on personal service contracts and

memoranda of agreement shall not be authorized for services rendered after disapproval of the Government Contract Review Committee unless the decision of the committee is overridden by the Secretary of Finance and Administration Cabinet or agency head, if the agency has been granted delegation authority.

Section 34. Disputes. Any dispute concerning a question of fact in connection with the work, not disposed of by agreement between the RECIPIENT and the CABINET, 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.

Section 35. 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 RECIPIENT and the CABINET.

Section 36. Termination. The CABINET may cancel all reimbursements under this AGREEMENT at any time deemed to be in the best interest of the CABINET by giving thirty (30) days written notice of such cancellation to the RECIPIENT. If reimbursement under this AGREEMENT is canceled under this section by reason other than violation of this AGREEMENT or any applicable law by the RECIPIENT, its agents, employees and contractors, the CABINET shall reimburse the RECIPIENT according to the terms hereof for all expenses incurred under this AGREEMENT to the date of such cancellation of reimbursement. The RECIPIENT may seek to cancel its obligations under this AGREEMENT at any time deemed to be in the best interest of the RECIPIENT by giving thirty (30) days written notice of such request to the CABINET. If the CABINET agrees to allow the RECIPIENT to cancel the PROJECT or cancel its obligations under this AGREEMENT, the RECIPIENT shall reimburse the CABINET for all Federal funding reimbursements made under this AGREEMENT.

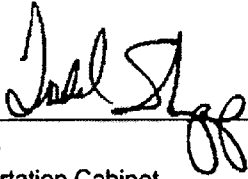
Section 37. Resolution. The RECIPIENT shall pass a resolution authorizing the Mayor to sign this AGREEMENT on behalf of the RECIPIENT. An acceptable Resolution shall contain the Project name, description, amount of funds being provided and an acknowledgement that the RECIPIENT agrees to ratify and adopt all statements, representations, warranties, covenants, and agreements contained in the AGREEMENT. Furthermore, by accepting the funds the RECIPIENT agrees to all terms and conditions stated in the AGREEMENT. A sample resolution is provided in Attachment C for the RECIPIENT's reference in creating an acceptable resolution. A copy of the resolution shall be attached to the AGREEMENT and returned to the CABINET prior to full execution of this PROJECT.

IN TESTIMONY WHEREOF, the parties have hereto caused this AGREEMENT to be executed upon signature by their proper officers and representatives.

KENTUCKY TRANSPORTATION CABINET:

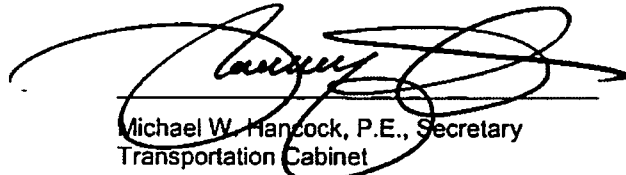
Approved as to form and legality:

Commonwealth of Kentucky



Attorney
Transportation Cabinet

Date: 6/12/14




Michael W. Hancock, P.E., Secretary
Transportation Cabinet

Date: 6/16/14

LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT:

Approved as to form and legality:



Attorney

Date: 06/05/14



Mayor

Date: 6/9/14

ATTACHMENT A

SCOPE OF WORK AND BUDGET SUMMARY

Scope of Work:

Construction of a multi-use trail beginning at the entrance to the YMCA on Loudon Avenue going SE on the north side approximately 700' then crossing over and following a rail line south to Fourth Street. The project will then follow Fourth Street to Elm Tree Lane to Third Street and also take Shropshire (from Fourth) to Third Street terminating at the Isaac Murphy Memorial Garden at the intersection of Midland Avenue and Third Street.

This project will include a new multi-use path, replacement sidewalks, limestone hardscapes, crosswalk enhancements, benches, bike racks, landscaping, vertical path markers and interpretive signage.

Budget:

All federally-funded Transportation Enhancement projects are set up in phases (design, ROW, utilities, construction). No work can begin on any phase of a project until you have received a notice to proceed with that phase from the Office of Local Programs. Funding for this project will be programmed with FHWA as each phase is approved.

NOTE: Federal funds are awarded for the specific scope of work provided by the project sponsor in their application. If the project is completed for less than the original award amount, the remaining funds will be not be available for the project sponsor to use on additional work items and/or added scope of work.

DESCRIPTION OF ITEM/ACTIVITY/PHASE	FEDERAL FUNDS	MATCH
<i>Design Phase (funding currently authorized by FHWA)</i>	\$232,900.00	
<i>Construction (estimated-not currently authorized with FHWA)</i>	\$2,188,800.00	
<i>20% Match (Cash provided by Project Sponsor)</i>		\$605,425.00
TOTAL	\$2,421,700.00	\$605,425.00
Total Project Cost:	\$3,027,125.00	

ATTACHMENT B
MAINTENANCE PLAN

The project sponsor will maintain the project for public use in perpetuity.

RESOLUTION NO. 370-2012

A RESOLUTION AUTHORIZING AND DIRECTING THE MAYOR, ON BEHALF OF THE URBAN COUNTY GOVERNMENT, TO ACCEPT A GRANT FROM THE KENTUCKY TRANSPORTATION CABINET, WHICH GRANT FUNDS ARE IN THE AMOUNT OF \$2,721,700.00 FEDERAL FUNDS, ARE FOR THE LEGACY TRAIL PHASE III, THE ACCEPTANCE OF WHICH OBLIGATES THE URBAN COUNTY GOVERNMENT FOR THE EXPENDITURE OF \$680,425.00 AS A LOCAL MATCH, AND AUTHORIZING THE MAYOR TO TRANSFER UNENCUMBERED FUNDS WITHIN THE GRANT BUDGET.

BE IT RESOLVED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 - That the Mayor, on behalf of the Lexington-Fayette Urban County Government, be and hereby is authorized and directed to accept a grant from the Kentucky Transportation Cabinet, which Grant funds are in the amount of \$2,721,700.00 Federal funds, are for the Legacy Trail Phase III and the acceptance of which obligates the Lexington-Fayette Urban County Government for the expenditure of \$680,425.00 as a local match.

Section 2 - That subject to the provisions of Ordinance No. 22-79, the Mayor is hereby authorized, in his discretion as Chief Executive Officer of the Urban County Government, to transfer the unencumbered balance of any operating or capital account appropriation to another operating or capital account appropriation within the Grant budget previously established for this Grant.

Section 3 - That this Resolution shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL: July 5, 2012

MAYOR



ATTEST:


CLERK OF URBAN COUNTY COUNCIL