

**AGREEMENT BETWEEN
COMMONWEALTH OF KENTUCKY
TRANSPORTATION CABINET DEPARTMENT OF HIGHWAYS
AND
LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT
ITEM NO. 7-593
SUPPLEMENTAL AGREEMENT NO. 6**

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

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

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

WHEREAS, these parties entered into Supplemental Agreement No. 3 on July 21, 2014 wherein the **Department** authorized: 1) An additional \$194,928 federal funds to **LFUCG** to supplement the monthly rents of individuals who were displaced by the **Project** (**Supplemental Rent Fund**) who will reside in housing units located in the Lexington Community Land Trust (**LCLT**) for at

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least seventy eight (78) months beyond their initial forty-two (42) month term provided for by the Record of Decision for the **Project**; 2) An additional \$348,173 federal funds for the maintenance, repairs and improvements to the original fourteen (14) housing units constructed on the Property (**Capital Improvement Fund**); 3) An additional \$50,000 federal funds to provide educational and social services for the benefit of those individuals residing in the housing units located on the Property (**Education and Social Services Fund**); and 4) The **Department** agreed to make available an additional \$100,000 federal funds for **Project** expenses associated with the establishment of the Lexington Community Land Trust, an additional \$50,000 federal funds for expenses associated with the maintenance of the Temporary Housing Area, and **LFUCG** agreed that the **Department** shall retain \$200,000 federal funds for state force activities;

WHEREAS, these parties entered into Supplemental Agreement No. 4 on August 6, 2015 wherein the **Department** authorized an additional \$2,720,038 FD52 funds to **LFUCG** for the continuation of the mitigation and Construction phase of the **Project** as well as authorized an additional \$2,450,000 in FD 52 funds to the **Department** for the continuation of the Utility phase of the **Project**;

WHEREAS, these parties entered into Supplemental Agreement No. 5 on January 10, 2017 wherein the **Department** authorized an additional \$1,254,450 FD52 funds to **LFUCG** for the continuation of the mitigation: \$34,800 for full owner residents, \$31,400 for gap financing, \$66,250 for the Lexington Community Land Trust (LCLT) conference and \$922,000 for the LCLT community building and for the **Project**; and

WHEREAS, the **Department** through FHWA has authorized an additional \$3,899,000 funds for the completion of mitigation efforts and project oversight of the **Project** as per the Sunset Provisions for Newtown Pike Extension Environmental Justice Mitigation (Sunset Agreement) attached hereto and incorporated as Addendum A as if fully set out herein;

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NOW, THEREFORE, the LFUCG and Department, acting on behalf of the Kentucky Transportation Cabinet, do hereby mutually agree to this Supplemental Agreement No. 6 as follows:

1. **Supplemental 6 Design funds (\$3,855,000 to be reimbursed to the LFUCG)**

- (a) \$1,998,000 Continuing mitigation/ gap financing for the **Project** as specified in the Sunset Agreement.
- \$506,000 Development Gap Funding
 - \$310,500 Additional Project Development
 - \$181,500 Housing Affordability Gap
 - \$800,000 Operating funds through 2023
 - \$200,000 Deficiencies in affordability
- (b) \$92,000 Additional funds for the Community Building for a total of \$1,012,000
- (c) \$750,000 Streetscape Plan: Trees and plantings, bus shelter, signs. The **Department** will contribute up to \$750,000, upon completion, the improvements will be maintained by **LFUCG**.
- (d) \$15,000 Historic Markers.
- (e) \$200,000 Access and Modification to existing DeRoode Street box culvert.
- (f) \$800,000 (Dedicated SLX funds) and \$200,000 (required 20% match provided by **LFUCG**) Park construction, LCLT to maintain current office space, and resident access to Artworks Carver School classes.

Project oversight and management of the **Project** and an additional \$44,000 of federal funds has been authorized. These funds will not flow through the **LFUCG**.

LFUCG has requested that the funds for the community center be available for an escrow account. Federal Highway Administration has approved the request. Through the Original Agreement and Supplemental Agreement the **Department** has authorized up to \$10,020,038 in Design funds and \$10,398,851 in Mitigation Funds to **LFUCG** to date. Any funds that cannot be utilized by **LFUCG**

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for the intended purpose as provided above will be made available to cover additional **Project** costs upon the mutual consent of the **Department** and **LFUCG**. This Agreement is in accordance with the Sunset Agreement which was approved by the **Department**, **LFUCG** and the **LCLT**.

2. Strict Adherence. The LFUCG agrees to expend and administer the funds strictly for the purposes for which they are intended as set forth in this Agreement and shall at all times maintain adequate staff to provide delivery systems and sufficient accounting control to accept responsibility for all administration, staffing, reporting, and monitoring of the Additional Funds.

3. Non Discrimination. Discrimination (because of race, religion, color, national origin, sex, sexual orientation, gender identity, age, or disability) is prohibited. This section applies only to contracts utilizing federal funds, in whole or in part. During the performance of this contract, the LFUCG agrees as follows:
 - a. The LFUCG will not discriminate against any employee, applicant, contractor or consultant for employment because of race, religion, color, national origin, sex, sexual orientation, gender identity, or age. The LFUCG further agrees to comply with the provisions of the Americans with Disabilities Act (ADA), Public Law 101-336, and applicable federal regulations relating thereto prohibiting discrimination against otherwise qualified disabled individuals under any program or activity. The LFUCG agrees to provide, upon request, needed reasonable accommodations. The LFUCG will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability. Such action 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 compensations; and selection for training, including apprenticeship. The LFUCG agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

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- b. The **LFUCG** will, in all solicitations or advertisements for work placed by or on behalf of the **LFUCG**; state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability.
- c. The **LFUCG** will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the **LFUCG**'s commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The **LFUCG** will take such action with respect to any contract, subcontract or purchase order as the **Department** or FHWA may direct as a means of enforcing such provisions, including sanctions for noncompliance.
- d. The **LFUCG** will comply with all provisions of Executive Order No. 11246 of September 24, 1965 as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.
- e. The **LFUCG** will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to the **Project** books, records and accounts by the **Department** or FHWA and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
- f. In the event of the **LFUCG** 's noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations or orders, this Agreement may be cancelled, terminated or suspended in whole or in part and the **LFUCG** may be declared ineligible for further government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in or as otherwise provided by law.
- g. The **LFUCG** will include the provisions of paragraphs (1) through (7) of section 202 of Executive Order 11246 in every contract, subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor, issued pursuant to section 204 of

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Executive Order No.11246 of September 24, 1965, as amended, so that such provisions will be binding upon each contractor, subcontractor, consultant or vendor. The **LFUCG** will take such action with respect to any contract, subcontract or purchase order as the **Department** or FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a **LFUCG** becomes involved in, or is threatened with, litigation with a contractor, subcontractor or vendor as a result of such direction by the **Department** or FHWA, the **LFUCG** may request the United States to enter into such litigation to protect the interests of the United States.

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

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

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6. Termination. If it is determined by the **Department** that the **LFUCG** is not complying with any provision of this Agreement, then the **Department** may terminate this Agreement upon thirty (30) days written notice. Upon termination of this Agreement by the **Department**, all funds remaining in the **Supplemental Rent Fund** and the **Capital Improvement Fund** shall be returned by the **LFUCG** to the **Department** and the **LFUCG** shall have no further right to reimbursement from the **Education and Social Services Fund**.

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

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

9. Prior Agreements. All other terms and conditions of the original December 13, 2000 agreement (C-00343167): the March 9, 2009 Supplemental Agreement No. 1: the July 10, 2011 Supplemental Agreement No. 2: the July 21, 2014 Supplemental 3 Agreement, (with the exception of the amendment set forth in the Sunset Agreement, page 4, paragraph 3, a-e which is hereby adopted as if originally set forth therein consistent with the terms of said Sunset Agreement): the October 2015 Memo: the August 6, 2015 Supplemental Agreement No. 4, (with the exception of the amendment set forth in the Sunset Agreement, page 4, paragraph 3, f. which is hereby adopted as if originally set forth therein consistent with the terms of said

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Sunset Agreement); and the January 10, 2017 Supplemental Agreement No. 5, (with the exception of the amendment set forth in the Sunset Agreement page 4, paragraph 3, f. which is hereby adopted as if originally set forth therein consistent with the terms of the Sunset Agreement), shall otherwise remain the same and are legally binding.

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

LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT

COMMONWEALTH OF KENTUCKY
TRANSPORTATION CABINET



Linda Gorton
Mayor

Jim Gray
Secretary

Date: _____

Date: _____

APPROVED AS TO FORM & LEGALITY

Todd Shipp
Office of Legal Services

Date: _____

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ADDENDUM A
Sunset Agreement