

**AGREEMENT BETWEEN THE
COMMONWEALTH OF KENTUCKY
TRANSPORTATION CABINET
AND THE
LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT
ROSE STREET BIKE LANES PROJECT
FEDERAL PROJECT 3003-121, 3003-291 & 3003-299
PO2-625-C-01099430
SUPPLEMENTAL AGREEMENT NO 3
\$164,000**

WITNESSETH:

WHEREAS, the Federal Highway Administration (FHWA), through the Commonwealth of Kentucky Transportation Cabinet, Department of Highways (CABINET) and the Lexington Fayette Urban County Government (RECIPIENT) entered into agreements on November 11, 2007 (C-01099430) and September 26, 2011 wherein the CABINET approved \$20,800 in federal funding to the RECIPIENT for the Rose Street Bike Lane PROJECT known as Federal Project Number 3003-121, the applicable Catalog of Federal Domestic Assistance number is 20.205-Highway Planning and Construction, and the Item No. 7-231.00 in the CABINET's Authorized Six-Year Highway Plan,

WHEREAS the CABINET authorized an additional \$30,000 for the continuation of the PROJECT into the Utility phase, known as Federal Project number 3003-291 as part of Supplemental Agreement No 2, which is currently pending authorization,

WHEREAS the CABINET has authorized an additional \$164,000 to the RECIPIENT for the continuation of the PROJECT into the Construction phase, known as Federal Project number 3003-299,

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, 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, FHWA Form 1273, and the Project Development Checklist & Certification,

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WHEREAS, the RECIPIENT shall refer to the Federal-Aid Project Development Guide for Local Public Agencies and any future revisions, the FHWA Contract Administration Manual, the CABINET/FHWA Stewardship Agreement, and all applicable State and Federal laws and regulations for assistance in complying with this AGREEMENT,

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 the Federal Funding Accountability and Transparency Act, 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) P. L. 112-141 known as MAP-21 (the Moving Ahead for Progress in the 21st Century Act), 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 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,

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 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 shall accept responsibility for all administration, staffing, reporting, monitoring, maintenance and operation costs for the PROJECT as identified under this AGREEMENT.

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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 for the community as further described by the RECIPIENT in the Detailed Scope of Work and Budget Summary (Attachment A, attached hereto and made a part of this AGREEMENT). In the Detailed 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 FHWA through the CABINET agrees to reimburse the RECIPIENT up to and additional \$164,000 for completion of work by the RECIPIENT, or consultants, contractors, or subcontractors hired by the RECIPIENT, under the obligations of this AGREEMENT for the following PROJECT:

FHWA, the CABINET, and the RECIPIENT have selected the Rose Street Bike Lanes PROJECT as a priority project and have allocated the CABINET with a portion of funding required to proceed with the PROJECT. The project development portion of the PROJECT is expected to develop preliminary engineering, obtain environmental concurrence, coordinate utility relocations, acquire necessary real property, and/or usage rights, final design, and preparation of a bid package for the Rose Street Bike Lanes PROJECT in Fayette County. This PROJECT is listed in the CABINET's Highway Plan as Item Number 7-231.

The RECIPIENT shall identify and provide a point of contact, including adequate contact information, for who shall be responsible to manage this PROJECT on the RECIPIENT's behalf, submit the Detailed 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 has agreed to execute the project development portion and a total estimate for this PROJECT. The CABINET/FHWA Project Development Checklist and Certification 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. The effective date of this AGREEMENT is the date of signature by the Secretary of the CABINET.

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After execution of the AGREEMENT, the CABINET will return an original AGREEMENT to the RECIPIENT and begin work on the design phase of the PROJECT. 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 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 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 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, and prior to expiration of this AGREEMENT. After that date, no expenditures, no matter when made, are eligible for reimbursement and the RECIPIENT shall be responsible for any unreimbursed expenses and any further expenses incurred to complete the PROJECT. After that date, the RECIPIENT shall complete the PROJECT without further reimbursement from the CABINET or the RECIPIENT shall refund all prior reimbursements to the CABINET.

Section 3. Funding Out Provision. The CABINET 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 CABINET shall provide the contractor 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 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.

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Section 4. Duration of Project. It is 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 complete 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 this 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 5. Project Funding. It is expressly understood that federal funding for this PROJECT is being provided by the FHWA through the CABINET, specifically through the Catalog of Federal Domestic Assistance program number 20.205, Highway Planning and Construction. Kentucky's Highway Plan identifies federal-aid Statewide Transportation Program (STP) funds earmarked by the Federal Highway Administration (FHWA). Through Item Number 7-231 of the Kentucky Highway Plan, the CABINET has obligated up to \$169,000 for this PROJECT. The federal share of the total cost of this phase of this AGREEMENT shall not exceed \$169,000 unless otherwise approved in writing by the CABINET with the concurrence of FHWA. The RECIPIENT has agreed to make available up to \$5,000 (toll credits in lieu of local match) of the total PROJECT funding to the CABINET for direct costs related to PROJECT oversight and management activities. If any funding made available to the CABINET is not used, the CABINET may permit the remaining funding to be obligated to the RECIPIENT for eligible PROJECT costs as evidenced in writing at the mutual consent of both parties. 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. The RECIPIENT has agreed to accept up to \$164,000(80%) in Federal reimbursement funding available as authorized for eligible PROJECT costs and shall be responsible for the local match funds \$41,000 (20%) as well as any costs in excess of the additional \$164,000 for the Construction Phase 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

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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 6. 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). The PROJECT costs referred to in this AGREEMENT shall be those costs that adhere to the Detailed Scope of Work and Budget Summary, as listed in Attachment A. 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."

Reimbursement by the CABINET shall not be provided to the RECIPIENT if any requirements are not met. In order to obtain reimbursement for said PROJECT, the RECIPIENT shall submit properly supported documents with all reimbursement requests for any materials, equipment, and labor used on the PROJECT to the CABINET's District 7 Office in Lexington. The RECIPIENT may submit to the CABINET'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 CABINET; however, in no event is the RECIPIENT to submit billings for work performed for less than a thirty (30) day period. The CABINET shall reimburse the RECIPIENT upon request each month 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, 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 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 RECIPIENT in charge.

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Section 7. Reporting and Monitoring. 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 RECIPIENT shall maintain and comply with all reporting requirements outlined by the CABINET and FHWA, including the submittal of progress reports detailing the status of the PROJECT. The RECIPIENT shall provide invoices for expenses that match the approved Detailed Scope of Work and Budget Summary submitted to the CABINET. 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 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 8. 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

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the appropriate environmental document. Federal funding will only be available for the reimbursement of construction costs upon the successful completion of all design activities.

Section 9. 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 federal and state 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 federal 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 federal and state 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,

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businesses, non-profit organizations and farms have been offered relocation assistance according to applicable federal and state 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 federal and state 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 10. 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 CABINET, 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 11. 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

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conflict with the PROJECT, the execution of a remedy for said conflict, and oversight of the execution. The CABINET 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 CABINET'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 CABINET'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.

Section 12. 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.

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Section 13. 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.

Section 14. 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 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 CABINET'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 CABINET'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.

Section 15. 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. Concurrence must be obtained by the RECIPIENT through the CABINET'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.

Section 16. 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

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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 FHWA Manual on Uniform Traffic Control Devices (MUTCD). All work performed shall be in accordance with the CABINET's current Standard Specifications for Road and Bridge Construction, 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 17. Engineering Services. The RECIPIENT 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 CABINET. The RECIPIENT shall complete all design work either with the RECIPIENT's staff, or through selection based on qualifications for a consultant that is either licensed and pre-qualified to do work for the CABINET 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 CABINET'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 RECIPIENT shall submit and obtain concurrences to the CABINET's District 7 Chief District Engineer in Lexington final design plans, specifications, and a total estimate prior to any construction. The RECIPIENT has agreed to make available up to and additional \$5,000 of the total Construction Phase funding for the PROJECT to the CABINET for direct costs related to PROJECT oversight and management activities.

Section 18. Contractor Procurement. The RECIPIENT shall be responsible for all PROJECT construction activities as defined within the body of this AGREEMENT, 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 which

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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 subcontractors must be pre-qualified by the CABINET for the type of work prior to be 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 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 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 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 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 19. Contract Administration and Inspection. The RECIPIENT shall be responsible for all aspects of administration, measuring, testing, and inspections to ensure the materials and construction work meets CABINET specifications and federal quality assurance

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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 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 current 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 charge of the PROJECT 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, what will be included in reports, and coordinate with the CABINET's construction inspector.

The CABINET 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

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the RECIPIENT oversight, conformance with all laws, regulations, and policies applicable to the Federal-aid Highway Program, and provide assistance to the RECIPIENT where necessary.

Section 20. Contract Completion. The RECIPIENT 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 RECIPIENT's project engineer in charge of the PROJECT shall notify the CABINET the PROJECT is ready for final inspection. If construction is a part of this PROJECT, 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 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 CABINET's District 7 Chief District Engineer in Lexington will complete a Final Acceptance Report.

Within thirty (30) days upon receipt of the CABINET's Final Acceptance Report, the RECIPIENT will issue the final payment to the contractor and proof of payment to the CABINET 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 records of materials, equipment, and labor costs for this PROJECT 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 21. Maintenance as Public Facilities. The RECIPIENT 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,

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trimming, or other maintenance in perpetuity. In the event that the property is not maintained as a public facility, the RECIPIENT shall reimburse the CABINET 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. The RECIPIENT shall obtain concurrence from the CABINET'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.

Section 22. 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. Specific wage rates shall be included in the construction contract between the RECIPIENT and the contractor, which must also include a contract provision that overrides the general applicability provisions in Form FHWA-1273, Sections IV and V.

Section 23. 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 24. 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.

Section 25. 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

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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 26. 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 27. 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 28. 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 RECIPIENT for work on this PROJECT. If a goal is established, the CABINET shall review and approve the DBE goal based on CABINET 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 CABINET. The RECIPIENT agrees to comply with the DBE Requirements contained within 23 CFR 635 Subpart A, Section 1101(b) of Public Law 112-141, 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

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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 29. 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. 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 30. Covenant Against Contingent Fees. The RECIPIENT 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 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 31. 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 32. 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

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applicable Federal or State historic property requirements prior to the payment of any monies under this AGREEMENT.

Section 33. 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 34. 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 35. 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 36. 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 U.S. Comptroller General and any representatives shall have authority to examine any records of the contractor, any subcontractors, the CABINET, or the RECIPIENT 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 CABINET, or the RECIPIENT 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

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authority to examine any record and interview any employee or officer of the contractor, any subcontractor, or other firms working on this 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. 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.

Section 37. Access to Records. The CABINET 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 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. 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.

Section 38. 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 39. Violation of tax and employment laws. KRS 45A.485 requires the RECIPIENT to certify that all contractors shall reveal to the Department, any final determination

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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 RECIPIENT 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 RECIPIENT's cancellation of the contract and the contractor's disqualification from eligibility for future state contracts for a period of two (2) years.

Section 40. 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.

Section 41. 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.

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Section 42. 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 43. Cancellation. Either party may cancel the contract at any time for cause or may cancel without cause on 30 days' written notice.

The CABINET reserves the right to 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 44. 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 copy of the resolution shall be attached to the AGREEMENT and returned to the CABINET prior to full execution of this PROJECT.

Section 45. Terms. All other terms and conditions of the Original November 11, 2007 Agreement, the September 26, 2011 Supplemental Agreement No.1, and the pending Supplemental Agreement No.2 (upon approval) shall remain the same and are legally binding.

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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

Todd Shipp, Attorney
Transportation Cabinet

Michael W. Hancock, Secretary
Transportation Cabinet

Date: _____

Date: _____

LOCAL PUBLIC AGENCY:

Approved as to form and legality:

Lexington Fayette Urban County

Attorney

Jim Gray
Mayor

Date: _____

Date: _____

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ATTACHMENT A – DETAILED SCOPE OF WORK AND BUDGET SUMMARY

The RECIPIENT agrees to create and attach hereto a Detailed Scope of Work and Budget Summary for the CABINET's review and approval, as listed in Section 1 of the AGREEMENT, or accept the Detailed Scope of Work and Budget Summary as provided below

This Project which is identified as 7-231 in the current Six-Year Highway Plan will add a bike lane on Rose Street from Rose Lane to Euclid Avenue on the University of Kentucky campus in the City of Lexington in Fayette County. This Project will increase bicycle commuting for students through a central section of campus.

The Original Agreement (November 11, 2007) approved \$12,800 (80%) in federal funds with a local match of \$3,200 (20%) for a total of \$16,000. Supplemental Agreement No. 1 (September 26, 2008) approved an additional \$8,000 (80%) in federal funds with a local match of \$2,000 for the Design phase. An additional \$5,000 in federal SLX funds was authorized for the CABINET for PROJECT oversight of the Design phase. The current total for the Design phase is \$20,800 federal SLX funds (80%) available to the RECIPIENT, \$5,200 local match funds (20%) and \$5,000 federal SLX funds to be retained by the CABINET with toll credits used in lieu of the local match funds.

The CABINET authorized an additional \$25,000 (80%) for the Utility Phase and the RECIPIENT will provide an additional \$6,250 (20%) in local match as part of the pending Supplemental No. 2 agreement. The CABINET will retain an additional \$5,000 for project oversight with toll credits used in lieu of local match funds. A total of \$30,000 federal SLX funds have been authorized for the Utility phase. The RECIPIENT is responsible for the local match (20%), any ineligible costs and any costs in excess of the additional \$25,000.

The CABINET has now authorized an additional \$164,000 (80%) for the Construction Phase and the RECIPIENT will provide an additional \$41,000 (20%) in local match as part of this Supplemental No. 3 agreement. The CABINET will retain an additional \$5,000 for project oversight with toll credits used in lieu of local match funds. A total of \$169,000 federal SLX funds authorized for the Construction phase.

	Federal Dollars	Local Match	State Forces
Design	\$20,800	\$5,200	\$5,000
Utility	\$25,000	\$6,250	\$5,000
Construction	\$164,000	\$41,000	\$5,000
Total	\$209,000	\$52,450	\$15,000

The RECIPIENT is responsible for any ineligible costs, \$52,450 local match funds, as well as, any costs in excess of \$209,000 for the completion of the PROJECT.