

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

WHEREAS, the Lexington-Fayette Urban County Government (**LFUCG**) and the Department of Highways (**Department**) entered into an agreement on September 14, 1999, (C-00021586) wherein the **Department** was to make available to the **LFUCG** up to \$6,000,000 with a \$1,500,000 local match for the widening of Todds/Liberty Road from 0.2 mile south of Andover Forest Drive/Forest Hill Drive to 0.1 mile south of Graftons Mill Lane (Section I), a total distance of 1.73 miles (**Project**);

WHEREAS, the same parties entered in Supplemental Agreement No. 1, August 15, 2006 whereby the **Department** authorized an additional \$1,000,000 for the utility relocation phase and the **Department** was to be responsible for bidding the **Project**, awarding the construction contract, administering the construction and inspecting the construction of the **Project** for quality and adherence to the appropriate specifications;

WHEREAS, the same parties entered in Supplemental Agreement No. 2, August 19, 2008 whereby the **Department** authorized an additional \$169,883 for the Section I design phase of the reconstruction of the Todds/Liberty road intersection which had undergone changes and revisions resulting in costs higher than anticipated;

WHEREAS, these same parties entered into an Agreement (C-04073306) on February 25, 2004, and Supplemental Agreements No. 1, on May 26, 2004 and No. 2, on December 13, 2004, and Supplemental Agreement No. 3 on June 28, 2012 wherein the **Department** was to make

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available to the **LFUCG** additional federal and state funds for additional phases for Section II of this **Project**;

WHEREAS, the **LFUCG** requires that an additional \$145,000 be allocated to complete the utility phase for Section I;

WHEREAS, the **Department** agrees this is a worthwhile **Project** and is willing to reimburse the **LFUCG** with additional federal funds for the completion of the utility phase of Section I and correct the amount of the design phase for this **Project**.

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

1. The **Department** agrees to provide an additional \$145,000 in reimbursable funding for the Section I utility phase of the Todds/Liberty Road reconstruction. These funds are required to complete the utility phase of the **Project**.
2. When added to the previously authorized funds, the **Department** has now agreed to make available to the **LFUCG** up to \$1,145,000 for the completion of the utility phase for Section I of the **Project**. Any cost in excess of the additional \$145,000 is the responsibility of the **LFUCG**.
3. To date the total authorized to **LFUCG** for all phases is as follows; \$1,235,775 for the Design Phase, \$2,806,200 for the Right-of-Way phase and \$1,145,000 for the Utility phase for a total of \$5,186,975.

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4. **LFUCG** shall demonstrate and self-certify they are capable of managing all activities and shall maintain adequately qualified staff to complete the **Project** in accordance with all federal and state laws and regulations addressed herein. All project development activities listed on the Project Development Checklist and Certification shall be considered, including preparation of an environmental document and a plans, specifications, and estimate package.

5. This Agreement is contingent upon the continued availability of appropriated funding. If the funding appropriated for 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 funding, further reimbursement of **Project** expenditures may be denied, the **Project** may be cancelled, the timeline extended or the scope amended by the **Department** either in whole or in part without penalty. Denial of further reimbursement, **Project** cancellation, extension or amendment because of an interruption in the appropriated funding is not a default or breach of this Agreement by the **Department** nor may such denial, cancellation, extension or amendment give rise to any claim against the **Department**.

6. **LFUCG** shall follow federal specifications for each necessary phase of this **Project**. **LFUCG** shall adhere to all federal regulations, including 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), and all terms of this Agreement for activities related to this **Project** as lead agency. **LFUCG** will obtain any required permits, licenses or easements required to initiate, perform, and complete work and provide documentation to the **Department's** District 7 Office in Lexington. In addition, **LFUCG** is responsible to meet all other requirements and adhere to all regulations necessary to qualify for the receipt of these federal funds. Concurrence must be obtained by **LFUCG** through the **Department's** District 7 Chief District Engineer in Lexington prior to the awarding of any contract for work or materials to be used on this **Project**.

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7. For any necessary design services of this **Project**, **LFUCG** agrees either to use a licensed consultant that has been pre-qualified to do work for the **Department** or to use a licensed Professional Engineer registered in the Commonwealth of Kentucky that demonstrates sufficient experience and knowledge in the type of work and receives the approval of the **Department's** District 7 Chief District Engineer in Lexington. **LFUCG** shall be responsible for all **Project** design activities, which may be completed either by **LFUCG's** staff or a consultant that is to be selected based on qualifications. All design work to be contracted must comply with all legal advertisement and selection requirements including, but not limited to, the Model Procurement Code provisions of KRS 45A and KRS 424. **LFUCG** shall submit and obtain concurrences to the **Department's** District 7 Chief District Engineer in Lexington final design plans, specifications, and a total estimate prior to any construction.

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

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9. Should the **Project** require the acquisition of any interest in real property by **LFUCG** and **LFUCG** does not have the authority to acquire property by eminent domain, the applicability of the Uniform Relocation Assistance (URA) and Real Property Acquisitions Policies Act, 49 CFR Part 24 (as amended) shall be limited to the following requirements: (1) Prior to making an offer for the property, the property owner shall be advised in writing that should negotiations fail to result in an amicable agreement, **LFUCG** will not be able to acquire the property, and (2) The property owner shall be informed in writing of what **LFUCG** believes to be the fair market value of the property based upon a fair market value appraisal approved prior to any offer by the **Department's** Division of Right of Way and Utilities. **LFUCG** shall ensure that all real property acquisition, relocation assistance, and property management are completed in a fair, equitable and approved manner consistent with all state laws and regulations governing the acquisition of real property for public use using highway funding. In all real property acquisitions, concurrence must be obtained through the **Department's** Division of Right of Way and Utilities and shall be subject to review and approval by the **Department**.
10. **LFUCG** shall either adopt in writing the **Department's** written Policies and Procedures for Right of Way Acquisition and Relocation Assistance or present its own written Policies and Procedures for approval by the **Department's** Division of Right of Way and Utilities. **LFUCG** shall conduct all appraisals and appraisal reviews using personnel meeting the **Department's** minimum qualifications and listed on the **Department's** pre-qualified appraiser and reviewer list. If **LFUCG** chooses to use an acquisition consultant on all or any portion of the **Project**, the selection of the consultant shall be in accordance with the **Department's** Division of Right of Way Guidance Manual. All appraisals must be reviewed and approved by the **Department's** Central Office review appraisers, failure to do so will result in the **Project** being ineligible for funding reimbursement.

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11. **LFUCG** must obtain encroachment permits to allow for work to be accomplished on state owned right-of-way from the **Department's** District 7 Office in Lexington. **LFUCG** acknowledges that the **Department** will require the placement of a restrictive easement approved by and in favor of the **Department** in the chain of title of any real property acquired or improved pursuant to the **Project**. If the owner of any real property acquired or improved pursuant to the **Project** is not the **Department** or **LFUCG**, the owner shall sign and be made a party to this Agreement and the owner hereby acknowledges, covenants and consents to the placement of a restrictive easement for perpetual maintenance of the property acquired or improved pursuant to the **Project** in the chain of title in favor of the **Department** prior to final reimbursement by the **Department**.

12. **LFUCG** is responsible for obtaining all permits and licenses required to initiate, perform and complete all phases of the **Project** in an appropriate and timely manner. Concurrence must be obtained by **LFUCG** through the **Department's** District 7 Chief District Engineer in Lexington prior to the awarding of any contract for work or materials to be used on this **Project**. Per the **Department/FHWA** Stewardship Agreement, the **Project** may require more involvement from the FHWA.

13. When conducting a utility relocation, KRS 177.035 and KRS 179.265 determine the necessity of payment for utility companies. Identification of utility or railroad facilities in conflict with the **Project**, the execution of a remedy for said conflict and oversight of the execution, and all work related to the **Project** shall be done in accordance with the Cabinet's Standards, Specifications, Standard Drawings, and Utilities and Rails Manual. 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**. Correspondence pertaining to

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utility or railroad coordination must be provided to both contracted parties. If a conflict of interest arises between the obligated party and a utility company, the unobligated party shall intercede to provide the utility coordination. The completed relocation shall be inspected to document the proper installation of the facilities. Upon full execution of the utility relocation for the **Project**, three (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 must be provided.

14. Federal design and construction criteria for the type of work shall be followed for the entire **Project**, including but not limited to the **Department's** Highway Design Manual, the **Department's** Standard Drawings, the **Department's** Standard Specifications for Road and Bridge Construction, the **Department's** Drainage Manual, the **Department's** Structural Design Manual, the American Association of State Highway Transportation Officials' (AASHTO) "Policy on Geometric Design of Highways and Streets", and the FHWA Manual on Uniform Traffic Control Devices (MUTCD). All work performed shall be in accordance with the **Department's** Standard Specifications for Road and Bridge Construction, edition 2008 as revised, and as provided in Subsection 105.01 of said Specifications. All materials furnished shall be in accordance with Subsection 106 of said Specifications to include all **Department** List of Approved Materials. These standards, specifications, and criteria are incorporated in this Agreement by this reference.
15. **LFUCG** shall pay all **Project** expenses and only upon meeting all terms and conditions of this Agreement will be eligible to receive federal reimbursement funding. All charges to the **Project** shall be supported by 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 **Department** or FHWA may require additional documentation at their discretion. In order to obtain reimbursement for said **Project**, **LFUCG** shall submit

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properly supported documents with all reimbursement requests for any materials, equipment, and labor used on the **Project** to the **Department's** District 7 Office in Lexington. **LFUCG** shall also submit with the request for reimbursement a formal letter that certifies that the work shown on the invoice has been performed in accordance with the terms of this Agreement and approved plans and specifications, that the charge was accomplished at the location agreed herein by both parties on a publicly maintained facility, that the material, equipment, or labor cost(s) shown are verified and are true and correct, and that the request for reimbursement in no way represents any degree of duplication of payments that have or will be received from other funding sources. This formal letter must be signed by the designated project manager for **LFUCG** in responsible charge. **LFUCG** may submit to the **Department's** District 7 Office in Lexington current billings reflecting the actual cost of work incurred during any given work period, which will be paid within a reasonable time after receipt by the **Department**; however, in no event is **LFUCG** to submit billings for work performed for less than a thirty (30) day period.

16. **LFUCG** shall self-certify that all state 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. Any dispute concerning a question of fact in connection with the work, not disposed of by agreement between **LFUCG** and the **Department**, shall be referred to Secretary of the Transportation Cabinet of the Commonwealth of Kentucky, or his duly authorized representative, whose decision shall be final.
17. This Agreement and the maintenance responsibilities herein shall survive in perpetuity the cancellation or termination of all or any portion of the **Project**, and shall survive the completion of and acceptance of the **Project**. **LFUCG** agrees to maintain all facilities improved by the **Project** to the condition existing for a public purpose at the time of the Final Acceptance Report in perpetuity. Maintenance shall include mowing, trimming, weed control, debris removal, and replacement of landscaping within the scope of the **Project**. In

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the event that the **Project** improvements are not maintained as a public facility, **LFUCG** shall reimburse the **Department** for all costs incurred and for all federal funding expended pursuant to the **Project**. **LFUCG** shall obtain concurrence from the **Department's** District 7 Chief District Engineer in Lexington of a Maintenance Plan for any facilities to be constructed (on a phase-by-phase basis, as the design of each phase is completed), prior to the awarding of any contract to construct such facilities.

18. No member, officer, or employee of the **Department** or **LFUCG** during his tenure or for one (1) year thereafter shall have any financial interest, direct or indirect, in this Agreement or the proceeds thereof as identified in KRS 45A.340. The **Department** and **LFUCG** shall comply with the requirements of the Executive Branch Code of Ethics KRS Chapter 11A. **LFUCG** warrants that no person, elected official, selling agency or other organization has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. No member, officer, or employee of the **Department** or **LFUCG** shall collude or lobby on behalf of this **Project** without penalty, including but not limited to suspension or debarment.
19. **LFUCG** shall permit the Finance and Administration 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; and **LFUCG** shall also permit representatives of these agencies to review any audit(s) performed by **LFUCG** or any other entity and to audit the books and accounts of **LFUCG** pertaining to the **Project**.
20. **LFUCG** hereby acknowledges its duty to the **Department** to determine whether it is subject to the Single Audit Act of 1984, P.L. 98-502, and the Single Audit Act Amendments of 1996, P.L. 014-56. **LFUCG** shall follow the provisions of OMB Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations". If **LFUCG** has expended more than

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\$500,000 in Federal funds from all sources, **LFUCG** shall provide the **Department** with copies of their OMB A-133 audit reports. **LFUCG** shall follow OMB Circular A-87 “Cost Principles for State, Local, and Indian Tribal Governments” as well.

21. **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(7), 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.
22. 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.
23. The **Department** reserves the right to cancel all reimbursements under this Agreement at any time deemed to be in the best interest of the **Department** by giving thirty (30) days written notice of such cancellation to **LFUCG**. If reimbursement under this Agreement is canceled under this section by reason other than violation of this Agreement or any applicable law by **LFUCG**, its agents, employees and contractors, the **Department** shall reimburse **LFUCG** according to the terms hereof for all expenses incurred under this Agreement to the date of

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such cancellation of reimbursement. **LFUCG** may seek to cancel its obligations under this Agreement at any time deemed to be in the best interest of **LFUCG** by giving thirty (30) days written notice of such request to the **Department**. If the **Department** agrees to allow **LFUCG** to cancel the **Project** or cancel its obligations under this Agreement, **LFUCG** shall reimburse the **Department** for all federal funding reimbursements made under this Agreement.

24. Any dispute concerning a question of fact in connection with the work not disposed of by Agreement between the **LFUCG** and the **Department** shall be referred to the Secretary of the Transportation Cabinet of the Commonwealth of Kentucky, or his duly authorized representative, whose decision shall be final. 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.
25. All other terms and conditions of the original September 14, 1999 agreement (C-00021586), August 15, 2006 Section I Supplemental Agreement No. 1, the August 19, 2008 Section I Supplemental Agreement No. 2, the February 25, 2004 Section II Agreement (C-04073306), the December 13, 2004 Section II Supplemental Agreement No. 2, and the June 28, 2012 Section II Supplemental Agreement No. 3 shall remain the same and are legally binding; and the May 26, 2004 Section II Supplemental Agreement No. 1 shall remain null and void.

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

LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT

COMMONWEALTH OF KENTUCKY
TRANSPORTATION CABINET

Jim Gray
Mayor

Michael W. Hancock
Secretary

Date: _____

Date: _____

APPROVED AS TO FORM & LEGALITY



Todd Shipp
Office of Legal Services

Date: 11/27/12