

AMENDMENT TO THE AGREEMENT BETWEEN
THE COMMONWEALTH OF KENTUCKY TRANSPORTATION CABINET
AND
LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT
TOWN BRANCH COMMONS CORRIDOR TIGER GRANT PROJECT/ ITEM NO. (07-03710)
FEDERAL PROJECT NUMBER 3003(341)
FEDERAL TIGER GRANT NUMBER T16HC017
TRAFFIC MATERIAL CHARGES
INCORPORATING DEPARTMENT OF TRANSPORTATION AMENDMENT 3

This Amendment made and entered into by and between the Kentucky Transportation Cabinet (CABINET) and the Lexington Fayette Urban County Government (RECIPIENT) acting as an amendment to the Original Agreement entered into between the parties dated May 11, 2018 and the Supplemental Agreement entered into between the parties dated March 24, 2020.

WHEREAS, on May 11, 2018, the parties hereto entered into an agreement for the Town Branch Commons Corridor TIGER Grant Project (PROJECT) and on March 24, 2020 these same parties entered into a modification of the terms to include changes approved in the Department of Transportation (DOT) Agreement for the PROJECT,

WHEREAS, the parties desire to amend said agreement to allow for the incorporation of the terms and agreement in DOT Addendum 3 approved February 25, 2022 and to allow for the CABINET to bill for traffic materials supplied by the CABINET for the PROJECT;

NOW THEREFORE, in consideration of the following promises and covenants contained herein the parties hereby agree as follows:

The Budget and Scope of Work of the Original Agreement is hereby modified by DOT Addendum 3 as shown on Attachment A;

On Town Branch Trail Phase 6, the contractor picked up traffic materials supplied by the CABINET that totaled \$27,743.64. To cover this charge, \$22,194.91 (80%) of TIGER funds must be released from the RECIPIENT's encumbrance and the RECIPIENT will need to be billed for \$5,548.73 (20%).

All other terms and conditions of the Original Agreement shall remain in effect.

IN WITNESS WHEREOF, the parties have hereto caused these presents to be executed by their officers thereunto duly authorized:

Commonwealth of Kentucky Transportation Cabinet:

Approved as to form & legality:

Attorney

Date: _____

Jim Gray, Secretary

Date: _____

Lexington Fayette Urban County Government

Approved as to form & legality:

Attorney

Date: _____

Linda Gorton

Linda Gorton, Mayor

Date: 6/1/2022

LEXINGTON- FAYETTE URBAN COUNTY GOVERNMENT
TOWN BRANCH TRAIL PROJECT
TIGER GRANT NUMBER T16HC017
ITEM NO. 07-03710
SUPPLEMENTAL AGREEMENT NO. 2
TRAFFIC MATERIAL CHARGES

ATTACHMENT A
SCOPE OF WORK AND BUDGET

Scope of Work:

This PROJECT shall follow the Scope of Work and Budget terms as outlined in the US DOT Agreement authorized February 25, 2022 Addendum 3.

The RECIPIENT shall follow the terms and agreements of the Original Agreement and the modifications of Supplemental Agreement No. 1, and modifications identified herein for Supplemental Agreement No. 2. Should any conflict arise, the US DOT Agreement shall be the authority.

ADDENDUM No. 3

**GRANT AGREEMENT UNDER THE
CONSOLIDATED APPROPRIATIONS ACT, 2016
(PUB. L. 114-113, DECEMBER 18, 2015)
FOR THE NATIONAL INFRASTRUCTURE INVESTMENTS
DISCRETIONARY GRANT PROGRAM
(FY 2016 TIGER DISCRETIONARY GRANTS)**

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

TOWN BRANCH COMMONS CORRIDOR

FHWA FY 2016 TIGER Grant No. 7

SECTION 1. PURPOSE OF ADDENDUM

- a) The purpose of this addendum, Addendum No. 3 (the "Addendum") to FHWA FY 2016 TIGER Grant No. 7 "Grant Agreement", is to recognize and accept modifications to the schedule and budget for the Town Branch Commons Corridor Project ("Project").
- b) This Addendum will constitute a formal amendment to the Grant Agreement which was executed by the U.S. Department of Transportation, the Federal Highway Administration (the "Government" or "FHWA") and the Lexington-Fayette Urban County Government (the "Recipient") (collectively the "Parties"). Except as modified, changed and supplemented by this Addendum, all terms and conditions of the original Grant Agreement shall continue in full force and effect.
- c) The following sets out the amendments to the referenced sections of the Grant Agreement:

SECTION 2. AMENDED ARTICLE 1 OF THE GRANT AGREEMENT

- a) Section 1.4 of the Grant Agreement is amended and restated in its entirety and will read as follows:

1.4 **Period of Performance.** The period of performance for this award begins on the date of this agreement and ends on the project end date in FMIS.

- b) Sections 1.5 through 1.8 of the Grant Agreement are renumbered as sections 1.6 through 1.9, respectively.

- c) A new Section 1.5 of the Grant Agreement is added to the Grant Agreement and will read as follows:

1.5 **Budget Period.** The budget period for this award begins on the date of this agreement and ends on the budget period end date that is listed in section 2.2. The Recipient shall not charge to this award costs that are incurred after the budget period.

d) Section 1.4 of the Grant Agreement is amended and restated in its entirety and will read as follows:

1.7 Fund Obligation.

- (a) As described in Attachment A, this project consists of a Base Phase for Right of Way Acquisition and Utility Relocation in all Zones, and an Option Phase 1 for Zones 3, 4, 6, and 7 Construction.
- (b) This agreement obligates the Base Phase amount of **Two Million Eight Hundred Seven Thousand Dollars (\$2,807,000)** for eligible costs in the Base Phase.
- (c) This agreement does not obligate funds for Option Phase 1. The parties may, by amendment under article 6, obligate the Option Phase 1 amount of **Eleven Million Two Hundred Eighty-Eight Thousand Eight Hundred Eighty-Seven Dollars (\$11,288,887)** for eligible costs in Option Phase 1 if the FHWA Kentucky Division Office approves the PS&E for Zones 3, 4, 6, and 7 and the Recipient has met all applicable Federal, State, and local requirements. Further, the approval for the Option Phase 1 is subject to availability of funds.

SECTION 3. AMENDED ARTICLE 2 OF THE GRANT AGREEMENT

a) Section 2.2 of the Grant Agreement is amended and restated in its entirety and will read as follows:

2.2 Summary of Project's Estimated Schedule. (See Attachment B for additional details).

Actual Completion of NEPA (Zone 6):	September 15, 2017
Actual Completion of NEPA (Zones 3, 4, and 7):	November 1, 2017
Actual Start ROW Acquisition (All Zones):	February 15, 2018
Actual End ROW Acquisition (All Zones):	July 31, 2019
Actual Start Utility Relocation (All Zones):	April 15, 2018
Actual End Utility Relocation (All Zones):	July 31, 2019
Actual Completion of Final Design (All Zones):	August 15, 2019
Actual PS&E Approval (All Zones):	September 18, 2019
Actual Construction Start Date (All Zones):	February 20, 2020

Planned Construction Substantial Completion
and Open to Traffic Date:

October 1, 2022

Budget Period End Date:

May 1, 2023

b) Section 2.4 of the Grant Agreement is amended and restated in its entirety and will read as follows:

2.4 Recipient Cost Share Certification.

The Recipient hereby certifies that not less than **Three Million Five Hundred Twenty-Three Thousand Nine Hundred Seventy-Two Dollars (\$3,523,972)** in non-Federal funds are committed to fund the project to satisfy the statutory requirement that at least 20% of the project's costs are funded by non-Federal sources.

SECTION 4. AMENDED ARTICLE 4 OF THE GRANT AGREEMENT

a) Section 4.3 of the Grant Agreement is amended and restated in its entirety and will read as follows:

4.3 Closeout Reports. No later than 90 days after the end of the period of performance the Recipient shall:

- (a) submit a final Federal Financial Report (SF-425), a certification or summary of project expenses, and third-party audit reports; and
- (b) provide a report comparing the final work, schedule, and budget to the statement of work described in section 2.1, the schedule described in section 2.2, and the budget described in section 2.3.

b) Section 4.4 of the Grant Agreement is amended and restated in its entirety and will read as follows:

4.4 Project Closeout. In this agreement, "**Project Closeout**" means the date that the USDOT notifies the Recipient that the project is closed out. Under 2 CFR 200.344, Project Closeout should occur no later than one year after the Recipient liquidates all obligations under this award and submits the reports identified in section 4.3.

SECTION 5. AMENDED ARTICLE 7 OF THE GRANT AGREEMENT

Section 7.2 of the Grant Agreement is amended and restated in its entirety and will read as follows:

7.2 Schedule Changes. If the project's substantial completion date changes to a date that is more than three months after the substantial completion date listed in section 2.2 or a schedule change would require the budget period to continue after the budget period end date listed in section 2.2, then the Recipient shall request a modification of this agreement

to update section 2.2 and Attachment B. For other schedule changes, the Recipient shall request a modification of this agreement to update section 2.2 and Attachment B unless the USDOT has consented, in writing consistent with the Administering Operating Administration's requirements, to the change.

SECTION 6. AMENDED ARTICLE 8 OF THE GRANT AGREEMENT

a) Section 8.1 of the Grant Agreement is amended and restated in its entirety and will read as follows:

8.1 USDOT Termination. The USDOT may, in its sole discretion, terminate this agreement and all of its obligations under this agreement if any of the following occurs:

- (a) The Recipient fails to obtain or provide any non-TIGER Discretionary Grant contribution or alternatives approved by the USDOT as provided in this agreement and consistent with sections 2.2 and 2.3;
- (b) The Recipient fails to begin right of way acquisition and utility relocation activities in all zones before **June 15, 2018**;
- (c) The Recipient fails to begin expenditure of award funds by **May 30, 2018**;
- (d) The Recipient fails to finish construction (substantial completion) by **January 1, 2023**;
- (e) The Recipient fails to meet the conditions and obligations specified under this agreement, including a material failure to comply with the schedule in section 2.2 even if it is beyond the reasonable control of the Recipient; or,
- (f) The USDOT, in its sole discretion, determines that termination of this agreement is in the public interest.

b) Section 8.3 of the Grant Agreement is amended and restated in its entirety and will read as follows:

8.3 Fund Liquidation, Adjustment, and Cancellation.

- (a) The Recipient shall liquidate all obligations of award funds under this agreement not later than the earlier of (1) 120 days after the end of the period of performance or (2) the statutory funds cancellation date identified in section 8.3(c).
- (b) Liquidation and adjustment of funds under this agreement follow the requirements of 2 C.F.R. 200.344 – .346.
- (c) Outstanding FY 16 TIGER Discretionary Grant balances are canceled by statute after September 30, 2024, and are then unavailable for any purpose, including adjustments.

SECTION 7. AMENDED ATTACHMENT B OF THE GRANT AGREEMENT

Attachment B of the Grant Agreement is amended and restated in its entirety and will read as follows:

ATTACHMENT B ESTIMATED PROJECT SCHEDULE

All Zones

Major Project Activity	Planned/Actual Start Date	Planned/Actual Completion Date
Preliminary Engineering	N/A	N/A
NEPA		
Zone 6	N/A	September 15, 2017
Zones 3,4,7	N/A	November 1, 2017
Final Design (Phase 1)		
Zone 6	N/A	N/A
Zones 3,4,7	December 9, 2016	August 16, 2017
Final Design (Phase 2):		
Zone 6	September 15, 2017	August 15, 2019
Zones 3,4,7	November 6, 2017	July 31, 2019
Base Phase: Right-of-Way (ROW) Acquisition & Utility Relocation		
ROW Acquisition	February 15, 2018	July 31, 2019
Utility Relocation	April 15, 2018	July 31, 2019
Option Phase 1: Construction		
Actual PS&E Approval		
Zone 6	N/A	September 18, 2019
Zones 3,4,7	N/A	September 18, 2019
Actual Construction Contract Letting Date		
Zone 6	N/A	November 20, 2019
Zones 3,4,7	N/A	November 21, 2019
Construction Start Date: All Zones		February 20, 2020
Paving	August 1, 2020	May 1, 2023
Roadway	February 20, 2020	May 1, 2023
Drainage	February 20, 2020	May 1, 2023
Bridge	July 15, 2020	March 1, 2022
Sewer	February 20, 2020	March 1, 2022
Signage	February 20, 2020	May 1, 2023
Signalization	December 15, 2021	May 1, 2023
Lighting	December 15, 2021	May 1, 2023

Landscaping	January 1, 2022	May 1, 2023
Miscellaneous	July 15, 2020	May 1, 2023
Mobilization/Demobilization	February 20, 2020	May 1, 2023
Contingency	October 1, 2021	May 1, 2023

Planned Construction Substantial Completion
and Open to Traffic Date:

October 1, 2022

Budget Period End Date:

May 1, 2023

SECTION 8. AMENDED ATTACHMENT C OF THE GRANT AGREEMENT

Attachment C of the Grant Agreement is amended and restated in its entirety and will read as follows:

**ATTACHMENT C
ESTIMATED PROJECT BUDGET**

ALL ZONES

ESTIMATED Project Budget: ALL ZONES Activity	FY16 TIGER Funds	Match to TIGER Funds ¹	Other Federal Funds ²	Match to Other Federal Funds	Other Local Funds	Total Project Cost
Design	\$0	\$0	\$1,060,000	\$154,000	\$900,000	\$2,114,000
ROW						
Zone 6	\$2,729,532.32	\$682,383.08	\$0	\$0	\$0	\$3,411,915.40
Zones 3,4,7	\$77,467.68	\$19,366.92	\$0	\$0	\$0	\$96,834.60
Utility	\$350,553.80	\$87,638.45	\$0	\$0	\$0	\$438,192.25
Paving	\$1,446,843.53	\$361,710.88	\$0	\$0	\$0	\$1,808,554.41
Roadway	\$3,497,407.21	\$874,351.80	\$0	\$0	\$0	\$4,371,759.01
Drainage	\$799,887.09	\$199,971.77	\$0	\$0	\$0	\$999,858.86
Bridge	\$161,700.00	\$40,425.00	\$0	\$0	\$0	\$202,125
Sewer	\$26,648.00	\$6,662.00	\$0	\$0	\$0	\$33,310
Signage	\$259,198.66	\$64,799.66	\$0	\$0	\$0	\$323,998.32
Signalization	\$214,841.69	\$53,710.42	\$0	\$0	\$640,000	\$908,552.11
Lighting	\$664,025.48	\$166,006.37	\$0	\$0	\$0	\$830,031.85
Landscaping	\$501,028.40	\$125,257.10	\$0	\$0	\$0	\$626,285.50

¹ Lexington Fayette Urban County Government (LFUCG)

² Congestion Mitigation Air Quality Program (CMAQ) funding and Transportation Alternatives Program (TAP) funding

ESTIMATED Project Budget: ALL ZONES Activity	FY16 TIGER Funds	Match to TIGER Funds ¹	Other Federal Funds ²	Match to Other Federal Funds	Other Local Funds	Total Project Cost
Miscellaneous	\$501,010.20	\$125,252.80	\$0	\$0	\$0	\$626,263
Mobilization and Demobilization.	\$525,778.40	\$131,444.60	\$0	\$0	\$0	\$657,223
Construction Management & Inspection Services	\$751,313.76	\$187,828.44	\$0	\$0	\$0	\$939,142.20
<i>Previously Incurred Cost for Construction Management & Inspection Services</i>	\$56,446.24	\$14,111.56	\$0	\$0	\$0	\$70,557.80
Contingency	\$1,532,204.54	\$383,051.15	\$0	\$0	\$1,777,434	\$3,692,689.69
Total:	\$14,095,887	\$3,523,972	\$1,060,000	\$154,000	\$3,317,434	\$22,151,293

SECTION 9. AMENDED ATTACHMENT D OF THE GRANT AGREEMENT

Attachment D of the Grant Agreement is amended and restated in its entirety and will read as follows:

**ATTACHMENT D
PERFORMANCE MEASUREMENT TABLE**

Study Area: Study area includes roadway and directly adjacent parcels of land on Midland Avenue from its intersection with East Third Street to East Main St, on East and West Vine St from its intersection with East Main Street to its intersection with West Main Street, on West Main Street from its intersection with West Vine Street to its intersection with Tucker Street, and Manchester Street from its intersection with Oliver Lewis Way to its intersection with South Forbes Rd.

Pre-project Measurement Date: October 1, 2018.

Pre-project Report Date: March 15, 2020.

Project Outcomes Report Date: October 1, 2026.

Table 1: Performance Measurement Table

Measure	Description and Category of Measure	Measurement Period	Reporting Period
Crash Rates by Severity	Safety Crash rates will be measured and reported as crashes per 100 million Vehicle Miles Traveled (VMT) and identified by the following severity categories: fatal, injury, and property-damage-only (PDO) crashes.	Baseline Measurement: Annual average, accurate as of the Pre-project Measurement Date Interim Performance Measures: Accurate as of October 1, 2023	Baseline Measurement: Pre-project Report Date Interim Performance Measures: For a period of 3 years, beginning December 1, 2023 , annually
Property Value Increase	Economic Competitiveness	Baseline Measurement: Annual average, accurate as of the Pre-	Baseline Measurement: Pre-project Report Date

Measure	Description and Category of Measure	Measurement Period	Reporting Period
of Private Property	Increase in dollars of assessed fair cash value of privately-owned parcels of land within the project area.	project Measurement Date Interim Performance Measures: Accurate as of October 1, 2023	Interim Performance Measures: For a period of 3 years, beginning December 1, 2023 , annually
Bike and Pedestrian Counts/Trips	Economic Competitiveness Average daily bicycle and pedestrian counts using National Bicycle & Pedestrian Documentation Project methodology by conducting hourly counts at key locations in the study area. Counts will be collected on a typical weekday, Saturday and Sunday and should be conducted monthly to produce a quarterly average.	Baseline Measurement: Annual average, accurate as of the Pre-project Measurement Date Interim Performance Measures: Accurate as of October 1, 2023	Baseline Measurement: Pre-project Report Date Interim Performance Measures: For a period of 3 years, beginning December 1, 2023 , annually

SECTION 10. EXECUTION OF ADDENDUM

This Addendum may be executed in counterparts, which constitute one document. The parties shall execute this Addendum in quadruplicate and intend each countersigned original to have identical legal effect. When signed and dated by the authorized official of the Government, this instrument will constitute a formal amendment to the Grant Agreement. Except as modified, changed, and supplemented by this Addendum, all terms of the original Grant Agreement shall continue in full force and effect. Upon full execution of this Addendum by the Parties, the effective date will be the date the Government executes this Addendum as set forth below.

EXECUTION BY THE USDOT

Executed this 1st day of March, 2022.

Todd Jeter
FHWA Kentucky Division Administrator

EXECUTION BY LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT


Executed this 22 day of February, 2022.

Linda Gorton

Linda Gorton
Mayor, City of Lexington

EXECUTION BY KENTUCKY TRANSPORTATION CABINET

Executed this 25 day of February, 2022.



Jim Gray
Secretary, Kentucky Transportation Cabinet

**LEXINGTON- FAYETTE URBAN COUNTY GOVERNMENT
TOWN BRANCH TRAIL PROJECT
TIGER GRANT NUMBER T16HC017
ITEM NO. 07-03710
SUPPLEMENTAL AGREEMENT NO. 2**

**ATTACHMENT B
ATTACH A RESOLUTION HERE**