

PROFESSIONAL SERVICES AGREEMENT

February
THIS IS AN AGREEMENT made as of ~~January~~ *February* 14th, 2023 between the LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, an urban county government organized pursuant to Chapter 67A of the Kentucky Revised Statutes (**OWNER**), and ELEMENT DESIGN, PLLC, a Kentucky limited liability company (**PROFESSIONAL**) (collectively known as the **PARTIES**). **OWNER** intends to proceed with design services in Lexington, Kentucky as described in Exhibits A, B, and C to this Agreement. The services are to include engineering, architecture, and landscape architecture for the city as contemplated in the **OWNER**'s Newtown Pike Extension (Oliver Lewis Way) Bus Station Design Scope dated October 2021 (Exhibit "A"). The services are hereinafter referred to as the "Project".

OWNER and **PROFESSIONAL** in consideration of their mutual covenants herein agree in respect of the performance of the services by **PROFESSIONAL** and the payment for those services by **OWNER** as set forth below.

PROFESSIONAL was selected by **OWNER** based upon its Response to the Newtown Pike Extension (Oliver Lewis Way) Bus Station Design Scope dated October 2021 (Exhibit "B") and the Kentucky Transportation Cabinet LPA Price Contracting Selection Process (Exhibit "C").

PROFESSIONAL shall provide the services for **OWNER** in all phases of the Project to which this Agreement applies, serve as **OWNER'S** representative for the Project as set forth below, and shall give professional consultation and advice to **OWNER** during the performance of services hereunder.

SECTION 1 - BASIC SERVICES OF PROFESSIONAL

PROFESSIONAL shall perform all services as hereinafter stated which include customary planning and analysis incidental thereto and as necessary to complete the Project.

The following documents are incorporated by reference herein as if fully stated and are attached hereto as exhibits: Newtown Pike Extension (Oliver Lewis Way) Bus Station Design Scope dated October 2021 (**Exhibit "A"**); **PROFESSIONAL'S** Response to Exhibit A dated January 17, 2022 (**Exhibit "B"**); and Kentucky Transportation Cabinet LPA Price Contracting Selection Process (**Exhibit "C"** which includes the following documents: (1) a memo to Charlie Lanter, LFUCG Grants and Special Programs from Doug Burton, LFUCG Division of Engineering with reference to Agreement Between Commonwealth of Kentucky Transportation Cabinet Department of Highways and Lexington-Fayette Urban County Government Item No. 7-593 Supplemental Agreement No. 6; (2) an approval email from Shane Tucker, Project Manager, Planning Section, KYTC Department of Highways, District Seven; (3) a Kentucky Transportation Cabinet Local Public Agency (LPA) Price Contract Selection Form; (4) a copy of the Agreement Between Commonwealth of Kentucky Transportation Cabinet Department of Highways and Lexington-Fayette Urban County Government Item No. 7-593 Supplemental Agreement No. 6; and (5) a copy of Urban County Council Resolution 144-2021).

pertaining thereto within a reasonable time so as not to delay the services of **PROFESSIONAL**.

- 3.4. Designate in writing a person to act as **OWNER'S** representative with respect to the services to be rendered under this Agreement. Such person shall have complete authority to transmit instructions, receive information, interpret and define **OWNER'S** policies and decisions with respect to materials, equipment, elements and systems pertinent to **PROFESSIONAL'S** services.
- 3.5. Give written notice to **PROFESSIONAL** whenever **OWNER** observes or otherwise becomes aware of any development that affects the scope or timing of **PROFESSIONAL'S** services, or any defect in the work of contractor(s).
- 3.6. Furnish or direct **PROFESSIONAL** to provide, necessary "Additional Services" as stipulated in Section 2 of this Agreement or other services as required.

SECTION 4 - PERIOD OF SERVICES

- 4.1. Time is of the essence for all phases of the Project. Notwithstanding anything to the contrary, the **PARTIES** hereby agree that **PROFESSIONAL** has 120 days after execution of this Agreement to complete the design phase of the Project set forth in Exhibit "B".
- 4.2. The provisions of this Section 4 of this Agreement and the various rates of compensation for **PROFESSIONAL'S** services provided for elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the Project through completion.
- 4.3. If delays result by reason of acts of the **OWNER** or approving agencies or other causes, which are beyond the control of the **PROFESSIONAL**, an extension of time for such delay will be considered. If delays occur, the **PROFESSIONAL** shall within ten (10) days from the date of the delay apply in writing to the **OWNER** for an extension of time for such reasonable period as may be mutually agreed upon between the **PARTIES**, and if approved, the Project schedule shall be revised to reflect the extension. Such extension of time to the completion date shall in no way be construed to operate as a waiver on the part of the **OWNER** of any of its rights in the Agreement. Section 6.5 of this Agreement, shall apply in the event the **PARTIES** cannot mutually agree upon an extension of time.

In the event that the overall delay resulting from the above described causes is sufficient to prevent complete performance of the Agreement within six (6) months of the time specified therein, the Agreement fee(s) set forth in Section 5 of this Agreement shall be subject to reconsideration and possible adjustment. Section 6.5 of this Agreement shall apply in the event the **PARTIES** cannot mutually agree upon an adjustment of fee.

provided for herein, as determined by mutual agreement between the **OWNER** and the **PROFESSIONAL**.

5.3.2. In the event the services of the **PROFESSIONAL** are terminated by the **OWNER** for fault on the part of the **PROFESSIONAL**, the **PROFESSIONAL** shall be paid reasonable value of the work performed or services rendered and delivered, and the amount to be paid shall be determined by the **OWNER**.

5.3.3. In the event the **PROFESSIONAL** shall terminate the Agreement because of gross delays caused by the **OWNER**, the **PROFESSIONAL** shall be paid as set forth in Section 5.3.1 above.

SECTION 6 – ADDITIONAL GENERAL CONSIDERATIONS

6.1. Termination

6.1.1. **PROFESSIONAL** may only terminate this Agreement due to **OWNER'S** material breach of the terms hereof which breach causes **PROFESSIONAL** to be unable to perform its duties and responsibilities under this Agreement, and only upon ten (10) days written notice to **OWNER**, and provided **OWNER** fails to cure such default within the ten (10) day period.

6.1.2. The **OWNER** reserves the right to terminate the Agreement for any reason at any time upon seven (7) days written notice to the **PROFESSIONAL**.

6.2. Ownership and Reuse of Documents.

All documents, including drawings and specifications, prepared by the **PROFESSIONAL** pursuant to this Agreement shall be delivered to and become the property of the **OWNER**. The **OWNER** shall have the right to reuse same without restriction or limitation, but without liability or legal exposure to **PROFESSIONAL**.

6.3. Legal Responsibilities and Legal Relations.

6.3.1. The **PROFESSIONAL** shall familiarize itself with and shall at all times comply with all federal, state and local laws, ordinances, and regulations which in any manner affect the services of this Agreement.

6.3.2. In performing the services hereunder, the **PROFESSIONAL** and its employees, agents and representatives shall not be deemed or construed to be employees of **OWNER** in any manner whatsoever. Except as otherwise provided in this Agreement, the **PROFESSIONAL** shall be acting as an independent contractor. The **PROFESSIONAL** shall not hold itself out as, nor claim to be, an officer or employee of **OWNER** by reason hereof and shall not make any claim, demand or application to or for any right or privilege applicable to an officer or employee of **OWNER**. The **PROFESSIONAL** shall be solely responsible for any claims for

6.6.1. The **PROFESSIONAL** shall be required to perform this Agreement in accordance with the degree of ordinary and reasonable skill and care usually exercised by engineers or landscape architects prevailing at the time, place and under similar conditions as the services hereunder are rendered.

6.6.2. The **PROFESSIONAL** shall be responsible for the accuracy of all work, even though drawings and specifications have been accepted by the **OWNER**, and shall make any necessary revisions or corrections resulting from errors and/or omissions on the part of the **PROFESSIONAL**, without additional compensation. By submission of reports, calculations and Drawings and Specifications to the **OWNER**, the **PROFESSIONAL** has made a statement that, to the best of its belief and knowledge, the information is accurate. Failure on the part of **PROFESSIONAL** to provide the expected level of accuracy may be grounds for the **OWNER** to terminate this Agreement.

6.7. Security Clause.

The **PROFESSIONAL** certifies that it shall not at any time release or divulge any information concerning the services covered by this Agreement to any person or any public or private organization except the **OWNER** without prior approval of the **OWNER** unless required by law.

6.8. Access to Records.

The **PROFESSIONAL** and its sub-professionals shall maintain all books, documents, papers, and accounting records, and make such materials available at their respective offices at all reasonable times during the contract period and for three (3) years from the date of final payment under the contract for inspection by the **OWNER**, and copies thereof shall be furnished if requested. Failure to maintain such records for three (3) years after the date of final payment may be grounds for the **OWNER** to disqualify the **PROFESSIONAL** from consideration for future **PROFESSIONAL** service agreements.

6.9. Required Risk Management Provisions.

6.9.1. DEFINITIONS

The **PROFESSIONAL** understands and agrees that the Risk Management Provisions of this Agreement define the responsibilities of the **PROFESSIONAL** to the **OWNER**.

As used in these Risk Management Provisions, the terms “**PROFESSIONAL**” and “**OWNER**” shall be defined as follows:

- a. **PROFESSIONAL** means the professional and its employees, agents, servants, owners, principals, licensees, assigns and subcontractors of any tier.

attorneys' fees and expenses, court costs, and expert witness fees and expenses, using attorneys approved in writing by LFUCG, which approval shall not be unreasonably withheld.

- (5) These provisions shall in no way be limited by any financial responsibility or insurance requirements, and shall survive the termination of this agreement.
- (6) LFUCG is a political subdivision of the Commonwealth of Kentucky. Professional acknowledges and agrees that LFUCG is unable to provide indemnity or otherwise save, hold harmless, or defend the Professional in any manner.

6.9.3. FINANCIAL RESPONSIBILITY

The **PROFESSIONAL** understands and agrees that the **PROFESSIONAL** shall, prior to final acceptance of the **PROFESSIONAL'S** proposal and the commencement of any work; demonstrate the ability to assure compliance with the Indemnity Agreement and other provisions of this Agreement.

6.9.4. INSURANCE REQUIREMENTS

6.9.4.1. Required Insurance Coverage

PROFESSIONAL shall procure and maintain for the duration of this Agreement the following or equivalent insurance policies at no less than the limits shown below and cause its subcontractors to maintain similar insurance with limits acceptable to OWNER in order to protect OWNER against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by PROFESSIONAL. The cost of such insurance shall be included in any proposal:

<u>Coverage</u>	<u>Limits</u>
Commercial General Liability (including Products/Completed Operations)	\$1 million per occurrence, \$2 million aggregate
Commercial Automobile Liability	\$1 million per occurrence
Professional (E&O) Liability	\$1 million per claim
Worker's Compensation	Statutory
Employer's Liability	\$100,000.00
Excess/Umbrella Liability	\$1 million per occurrence

changed, however, new evidence of coverage must be submitted in accordance with these Insurance Requirements.

6.9.4.3. Right to Review, Audit and Inspect

PROFESSIONAL understands and agrees that OWNER may review, audit and inspect any and all of PROFESSIONAL'S records and operations to insure compliance with these Insurance Requirements.

6.9.5. SAFETY AND LOSS CONTROL

PROFESSIONAL shall comply with all applicable federal, state, and local safety standards related to the performance of its works or services under this Agreement and take necessary action to protect the life, health and safety and property of all of its personnel on the job site, the public, and OWNER.

6.9.6. DEFINITION OF DEFAULT

PROFESSIONAL understands and agrees that the failure to comply with any of these provisions shall constitute default under this Agreement. PROFESSIONAL also agrees that OWNER may elect as its option any single remedy or penalty or any combination of remedies and penalties, as available, including but not limited to purchasing insurance and charging PROFESSIONAL for any such insurance premiums purchased, or suspending or terminating this Agreement.

SECTION 7 - EQUAL EMPLOYMENT OPPORTUNITY

During the performance of this service agreement, the PROFESSIONAL agrees as follows:

- 7.1. The PROFESSIONAL will not discriminate against any employee or application for employment because of race, color, religion, national origin, sex, age or handicap. The PROFESSIONAL will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, national origin, sex, age or handicap. Such action shall include, but not be limited to the following: employment upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeships. The PROFESSIONAL agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this non-discrimination clause.
- 7.2 The PROFESSIONAL will, in all solicitations or advertisements for employees placed by or on behalf of the PROFESSIONAL, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, national origin, sex, age (between forty and seventy), or handicap.

IN WITNESS WHEREOF, the PARTIES hereto have made and executed this Agreement as of the day and year first above written.

OWNER (LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT):

Signature: Linda Gorton
MAYOR

Date: 2/17/2023

ATTEST:

Martine Stock
CLERK OF URBAN COUNTY COUNCIL

PROFESSIONAL (Element Design, PLLC):

Signature: [Signature]

Printed Name: Ramona Fry

Position: Principal

Date: 1/9/2022

COMMONWEALTH OF KENTUCKY
COUNTY OF (Fayette)

The foregoing instrument was subscribed, sworn to and acknowledged before me by

Ramona Fry as Principal for

and on behalf of Element Design, PLLC, on this the 9 day of

January, 2023.

My commission expires: 9/26/2026

Phoebe Emma Kingsley - KYNP59617
NOTARY PUBLIC, STATE AT LARGE, KY

Newtown Pike Extension (Oliver Lewis Way)
Bus Station – Design Scope
October, 2021

The Lexington Fayette Urban County Government (LFUCG) in cooperation with the Kentucky Transportation Cabinet (KYTC) and Lextran is soliciting Construction Plans, Specification and Contract Documents which conform to LFUCG's Division of Central Purchasing requirements to design and construct four (4) bus shelters located along Oliver Lewis Way, between West High Street and South Broadway. Two of the shelters (at sites #1 and 2) shall be designed to reflect the unique character of the area (the Davistown Neighborhood and Pleasant Green Hill Area) and the other two shelters (at sites # 3 and 4) shall be generic structures that can be purchased and erected as a complete package (potential manufacture could be Brasco).

Design and construction plans shall include, at a minimum, a sight plan for each location identifying all topography and geographical features. Some of this information will be provided from the Newtown Pike Extension Construction Plans (Stantec, Inc.) in a variety of formats (e.g., PDF files, ACAD, and Microstation). Architectural plans must show elevation views from all sides. Structure plans should identify foundations as well as wall and roof design. Electrical plans for lighting, outlets and service connections must also be included. The design must accommodate the Kentucky American Transmission Easement and KU Utilities will be asked to review the final design (site #1). Construction specifications shall, at a minimum, contain a list of materials along with installation quantities and performance based specifications. The design for these two shelters should incorporate architectural elements found in Davis Park neighborhood and park as well as the surrounding area. There is a desire for the shelters to reflect history of the neighborhood as well.

The final plans shall be submitted to the LFUCG in ACAD format and PDF format.

Design for the generic structures will require a foundation design for placement according to the manufacturer's specifications. The installation instructions that will come with the complete package shelters can be inserted into the contract documents and specifications.

The consultant shall also prepare two estimated probable costs per site. The first at the beginning of the project and the final before bidding.

Attached is a plan showing approximate locations of the four sites designating the type of shelter to be constructed on each site. The basic footprint of the designed structures shall be 15 - 20 feet by 20 – 25 feet constructed of industrial materials capable of lasting 20 years before needing maintenance. Brick or cut stone walls/columns and the roof shall be 50 year dimensional shingle or metal ridge.

EXHIBIT "B"

PROFESSIONAL'S Response to Exhibit A dated January 17, 2022

January 17, 2022

Mr. Andrew Grunwald
LFUCG Engineering

Re: Fee Proposal for Oliver Lewis Way Bus Stations / Stops (4 total bus stations)

Mr. Grunwald -

Provided below is a fee proposal to provide design services for the implementation for the four Lextran Bus Stops at Oliver Lewis Way as indicated on the attached information scope dated October, 2021. Our fee proposal is broken down by Phase; we have also included additional consultation as needed for site electrical and structural engineering.

Landscape Architectural Services and Civil Engineering Design Services in this Proposal shall include the following:

- Site Plans for each Station, including clearing, grading and layout / materials plan
- Specification of standard bus shelters at 2 stations
- Design for custom / specialized bus shelters at 2 stations that complement the Davis Park neighborhood
- Concept / Master Plan review & Schematic Design for the above with Opinion of Probable Cost
- Combined DD / CD Phase Documentation with Opinion of Probable Cost and RTA documents
- Project Permitting and review with KYTC as needed
- Coordination with LFUCG Purchasing for Bidding & Negotiations
- Contract / Construction Administration

A more detailed schedule of anticipated deliverables by phase and task is provided on the following pages fees. The attached fee is a Not to Exceed fee per KY Finance Cabinet Master Agreement and invoicing will be done by actual hours incurred at those Master Agreement rates, to the NTE amounts indicated on the attached. We can discuss further if it would be preferred to include on both our LA and Civil Master Agreements, or keep all to one agreement.

Thank you again for the opportunity to provide our fee for services. Please let me know if you have any questions or comments regarding the attached scope of services and fee proposals.

Sincerely,

Ramona Fry, Principal
Element Design

CONSTRUCTION ADMINISTRATION (\$8,000):

- Attend all required construction meetings, max 2x / month, 6 months of construction time anticipated
- Prepare field reports for regular progress meetings
- Provide Substantial Completion and Final Completion inspections and punch lists
- Provide answers / clarifications to contractor questions
- Issue PR's, ASI's, respond to RFI's
- Review submittals
- Agency Coordination as needed
- CA services are AS NEEDED

TOTAL NOT TO EXCEED PROFESSIONAL SERVICES FEE: \$32,600**Additional Services:** (See Per Diem Rates Below)

Any scope / services or permitting not specifically indicated above. This includes unforeseen conditions which may include but are not limited to natural springs, caverns, archeological findings, undefined poor soils and rock that require additional site adjustments.

Proposed Professional Services Rates:

Principal Landscape Architect - \$125 / hour
Professional Landscape Architect - \$100 / hour
Professional Civil Engineer - \$100 / hour

Proposal Accepted

Title

Date

EXHIBIT “C”

Kentucky Transportation Cabinet LPA Price Contracting Selection Process

(which includes the following documents: (1) a memo to Charlie Lanter, LFUCG Grants and Special Programs from Doug Burton, LFUCG Division of Engineering with reference to Agreement Between Commonwealth of Kentucky Transportation Cabinet Department of Highways and Lexington-Fayette Urban County Government Item No. 7-593 Supplemental Agreement No. 6; (2) an approval email from Shane Tucker, Project Manager, Planning Section, KYTC Department of Highways, District Seven; (3) a Kentucky Transportation Cabinet Local Public Agency (LPA) Price Contract Selection Form; (4) a copy of the Agreement Between Commonwealth of Kentucky Transportation Cabinet Department of Highways and Lexington-Fayette Urban County Government Item No. 7-593 Supplemental Agreement No. 6; and (5) a copy of Urban County Council Resolution 144-2021)



MEMORANDUM

TO: Charlie Lanter
Grants and Special Programs

FROM: Doug Burton, P.E.
Director of Engineering

DATE: February 25, 2022

RE: LFUCG: PO with Element Design PLLC, for consulting services

The LFUCG in cooperation with the KYTC has selected Element Design to provide consulting services to develop construction plans, specification and contract documents for bus shelters to be constructed on Oliver Lewis Way, next to the Newtown Pike Extension Mitigation Area. The cost of this professional service will be \$32,600. Attached is a scope of work for the proposed construction.

The LFUCG will be using Federal Funds as identified in ***Supplemental Agreement #6 – Addendum A: Sunset Provisions for Newtown Pike Extension Environmental Justice Mitigation, KYTC Financial Commitments: Item #5 Streetscape*** (Resolution No. 144-2021). The Kentucky Transportation Cabinet LPA Price Contracting Selection process was utilized for the selection of the consultant and the KYTC authorization has been included with this memorandum for justification and documentation.

AFG:afg

C:	George Milligan	Office of the Commissioner – Environmental Quality & Public Works
	Michelle Kosieniak	Division of Parks and Recreation
	Mark Feibes, P.E.	Division of Engineering
	Andrew Grunwald, P.E.	Division of Engineering
	Shauna O'Brien	Grants and Special Programs
	File	

22.P031.403.Design of Bus Shelter -- 2-24-2022.doc



James Ballinger, PE, PLS
State Highway Engineer
Kentucky Transportation Cabinet
200 Mero Street
Frankfort, KY 40622
502-564-3730

From: Oatman, Susan B (KYTC) <Susan.Oatman@ky.gov>
Sent: Monday, January 24, 2022 1:57 PM
To: Ballinger, James E (KYTC) <james.ballinger@ky.gov>
Cc: Bray, Angie M (KYTC) <angie.bray@ky.gov>
Subject: FW: Price Contract Request - LFUCG Div of Parks

****CAUTION** PDF attachments may contain links to malicious sites. Please contact the COT Service Desk ServiceCorrespondence@ky.gov for any assistance.**

James,

I am writing to request your approval of LFUCG-Division of Parks request (through Shane Tucker, D7) to use a price contract in accordance with KRS 45A.837 and the LPA Guide (Chapter 3). The request is to enter into a contract up to \$42,600 with Element to plan and design the construction plans and assist with construction administration for 4 bus stations along Oliver Lewis Way. The project is part of the sunset agreement funded with \$800,000 SLX funds and \$200,000 local LFUCG match. Attached is the price contract request form, the PR1, MOAs, and the scope of services.

Thanks!

Susan B. Oatman, P.E.

Division of Program Management- Statewide LPA Coordinator
Kentucky Transportation Cabinet
200 Mero Street
Frankfort, KY 40601

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

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

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

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

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

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NEWTOWN PIKE EXTENSION (KY 922)
ITEM NO. 7-593
SUPPLEMENTAL MOA NO. 6
\$3,055,000 FEDERAL FUNDS
\$800,000 DEDICATED SLX FUNDS

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

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

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

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

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

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\$800,000 DEDICATED SLX FUNDS**

b. The **LFUCG** will, in all solicitations or advertisements for work placed by or on behalf of the **LFUCG**; state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability.

c. The **LFUCG** will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the **LFUCG**'s commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The **LFUCG** will take such action with respect to any contract, subcontract or purchase order as the **Department** or **FHWA** may direct as a means of enforcing such provisions, including sanctions for noncompliance.

d. The **LFUCG** will comply with all provisions of Executive Order No. 11246 of September 24, 1965 as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.

e. The **LFUCG** will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to the **Project** books, records and accounts by the **Department** or **FHWA** and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

f. In the event of the **LFUCG**'s noncompliance with the nondiscrimination clauses of this Agreement or with any of the said rules, regulations or orders, this Agreement may be cancelled, terminated or suspended in whole or in part and the **LFUCG** may be declared ineligible for further government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in or as otherwise provided by law.

g. The **LFUCG** will include the provisions of paragraphs (1) through (7) of section 202 of Executive Order 11246 in every contract, subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor, issued pursuant to section 204 of

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\$3,055,000 FEDERAL FUNDS
\$800,000 DEDICATED SLX FUNDS


6. **Termination.** If it is determined by the Department that the LFUCG is not complying with any provision of this Agreement, then the Department may terminate this Agreement upon thirty (30) days written notice. Upon termination of this Agreement by the Department, all funds remaining in the Supplemental Rent Fund and the Capital Improvement Fund shall be returned by the LFUCG to the Department and the LFUCG shall have no further right to reimbursement from the Education and Social Services Fund.
7. **Disputes.** Any dispute concerning a question of fact between the LFUCG and the Department concerning or relating to the additional funds shall be referred to the Secretary of the Transportation Cabinet of the Commonwealth of Kentucky, or his duly authorized representative, whose decision shall be final. Any proposed change or extension to this Agreement shall be at the mutual consent of the LFUCG and the Department and shall be evidenced in writing.
8. **Resolution.** The LFUCG shall pass a resolution authorizing the Mayor to sign this Agreement on behalf of the LFUCG. An acceptable Resolution shall contain any project name, description, amount of funds being provided and an acknowledgement that the LFUCG agrees to ratify and adopt all statements, representations, warranties, covenants, and agreements contained in this Agreement. A copy of the resolution shall be attached to this Agreement and returned to the Department.
9. **Prior Agreements.** All other terms and conditions of the original December 13, 2000 agreement (C-00343167): the March 9, 2009 Supplemental Agreement No. 1: the July 10, 2011 Supplemental Agreement No. 2: the July 21, 2014 Supplemental 3 Agreement, (with the exception of the amendment set forth in the Sunset Agreement, page 4, paragraph 3, a-e which is hereby adopted as if originally set forth therein consistent with the terms of said Sunset Agreement): the October 2015 Memo: the August 6, 2015 Supplemental Agreement No. 4, (with the exception of the amendment set forth in the Sunset Agreement, page 4, paragraph 3, f. which is hereby adopted as if originally set forth therein consistent with the terms of said

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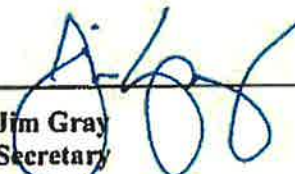
IN TESTIMONY WHEREOF, the parties have caused these presents to be executed by their officers thereunto duly authorized.

LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT

COMMONWEALTH OF KENTUCKY
TRANSPORTATION CABINET



Linda Gorton
Mayor




Jim Gray
Secretary

Date: 3/24/2021

Date: 4/30/2021

APPROVED AS TO FORM & LEGALITY

DocuSigned by:


Todd Shipp
Office of Legal Services
4/29/2021
Date: _____

Addendum A

Sunset Provisions for Newtown Pike Extension Environmental Justice Mitigation

WHEREAS, the Department of Highways (Department) and the Lexington Fayette County Government (LFUCG) entered into an agreement on December 13, 2000 and series of five supplemental agreements (SA) all relating to the Newtown Pike Extension Project (NPE), including mitigation of project impacts to a low income and minority neighborhood, Davis Bottom N/K/A Davis Park; and

WHEREAS, the Department and LFUCG jointly created the Lexington Community Land Trust, Inc., a Kentucky non-profit corporation (LCLT) as part of said mitigation for the protection and preservation of Davis Park along with its attendant affordable housing thereby mitigating social justice impacts to the benefit of the affected neighbors and to the larger community; and

WHEREAS, the Department, LFUCG, and LCLT, the three principal parties, desire to fulfill all remaining obligations of the project related to social justice mitigation and provide an opportunity for the LCLT to become self-sustaining; and

WHEREAS, the Department, LFUCG, and the LCLT desire clarity of the remaining commitments and project expectations between these three principal parties in order to achieve finality of the project's social justice component; and

WHEREAS, the Department, LFUCG, and the LCLT, acknowledge that upon execution and fulfillment of this agreement and the sixth SA, all requirements set forth in the ROD related to social justice mitigation and the LCLT are satisfied.

NOW, THEREFORE, the undersigned authorized agents intend for the execution and fulfillment of a sixth SA by and between the Department and LFUCG to encompass and incorporate by reference this document setting forth the final actions required of the project as enumerated below. Whereupon the LCLT will be obliged to declare in writing KYTC's obligations outlined in the Record of Decision fulfilled as it relates to the LCLT and social justice mitigation.

KYTC Financial Commitments:

- 1. Funding of Community Center Building: KYTC shall provide a total \$1,012,000.00 for design and construction of the community center structure(s). This figure includes the \$920,000 previously designated in SA#5 dated January 10, 2017, Section 1(f) and represents a 10% (\$92,000) increase in funding due to a rise in construction costs.**

legal fees, holding costs (insurance, utilities, security, maintenance, etc.), resource development (financing costs, grant consultant), site development (utility infrastructure, tree plantings), pre-development (environmental testing, property surveys, appraisals), project requirements (community engagement, competitive bidding), and additional construction costs for original resident homes. These reimbursable costs can be paid upon receipt of proper documentation.

- c. Of the \$1,998,000, \$181,500 is designated for authorized reimbursement of the housing affordability gap funding for the difference between sales price and the appraised market value for Phase I single-family homes in the project mitigation area. This funding is to be applied toward affordability gaps not previously covered by Attorney General Settlement Funds. These reimbursable costs can be paid upon receipt of proper documentation.
- d. Of the \$1,998,000, \$800,000 is designated as additional operating funds to last through fiscal year 2023. Operating funds shall be distributed by LFUCG in equal annual installments of \$200,000 with LCLT providing a copy of an independent audit for each installment period.
- e. Of the \$1,998,000, \$200,000 is designated for a set-aside fund to cover deficiencies in affordability on the resale of homes owned by original Davis Bottom residents. These funds shall be held in an interest-bearing escrow account by the LCLT solely for the purposes stated.

7. Access Modification to Existing Box Culvert at DeRoode Street: KYTC shall provide LFUCG with an additional \$200,000 for construction of an additional manhole to be completed no later than June 2023 in order to allow LFUCG access for future inspections.

8. University of Kentucky, Kentucky Transportation Center assistance: KYTC, through the Kentucky Transportation Center (KTC), will provide assistance within six months from the execution date of this agreement for 10 weeks at 15 hours per week to LFUCG and the LCLT should they desire to implement any recommendations from the NPE LCLT Sustainability Report.


9. Total financial commitment of \$3,855,000: KYTC will make a final financial commitment of \$3,055,000 federal STP funds. There will be an additional \$800,000 separately authorized SLX funds through the Lexington area MPO. This commitment is made with the understanding that **NO ADDITIONAL FUNDS** will be requested or forthcoming pertaining to social justice mitigation and/or the LCLT.

- 2. Property transfer:** Upon receipt of the deeds transferring title to Parcel 1215 and to Phase II properties, LFUCG shall take immediate steps to transfer said property to the LCLT, acknowledging that time is of the essence. Said land must be transferred no later than June 1, 2021.
- 3. Design and construct Davis Park:** LFUCG will be responsible for \$200,000 matching funds for the design and buildout of the park. LFUCG shall begin the Request for Qualifications (RFQ) process no later than March 15, 2021 so that design and construction will begin as soon as funds are authorized in July 2021. Continuous and uninterrupted progress (save acts of nature) shall begin as soon as possible on the design and construction of Davis Park to meet a completion date of no later than December 31, 2022.
- 4. Streetscape:** Upon notice of authorization of the \$750,000 for streetscape work, LFUCG shall design a bus stop with input from the community and install streetscape amenities per project recommendations and community input with said work being completed no later than June 2023. LFUCG shall also provide an itemized budget for this effort.
- 5. Continue to provide current space at Artworks Carver School for LCLT offices:** LFUCG agrees to allow the LCLT to maintain its current office space at no cost to either KYTC or LCLT. This shall continue until such time as the Phase II property is transferred from KYTC to LFUCG and subsequently to LCLT, allowing until June 2023 for construction of office and community buildings.
- 6. Carver School Artworks classes:** Upon execution of this agreement, LFUCG agrees to make Artworks classes affordable to children of LCLT residents for 1 year. This shall be accomplished through reduced fees (sliding scale fees based on income up to and including a 50% of full value discount). LFUCG further agrees to proceed in good faith for the following 5 years to co-apply, with the LCLT, for grants to cover the costs of reduced fees for LCLT residents and others.
- 7. Support the LCLT:** LFUCG agrees to make a good faith effort to support residential and commercial development of Davis Park, f/k/a Southend Park Urban Village and/or Davis Bottom. LFUCG shall also make a good faith effort to create policies and programs to preserve and enhance existing affordable housing by using the land bank, the LCLT, and the Vacant Land Commission. These policies and programs will include but not be limited to taking steps to address ongoing funding and identify methods to facilitate these programs by reaching the critical mass of assets needed to become self-sufficient as set forth in Imagine Lexington, 2018 Comprehensive Plan, pp. 46, 49, and 244.

5. Review and consider findings and recommendations of the NPE Lexington Community Land Trust Sustainability Report: Proceed in good faith in reviewing and considering the findings and recommendations of the NPE Lexington Community Land Trust Sustainability Report.

6. Notice of completion of neighborhood buildout. LCLT shall notify LFUCG in writing that the buildout of the neighborhood has been completed.

IN TESTIMONY WHEREOF, the three principal parties have caused these presents to be executed by their duly authorized officers:



Russ Barclay
Executive Director
Lexington Community Land Trust

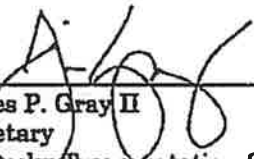
November 17, 2020
Date

Reviewed as to form and legality:



William Fogle
Office of Legal Services
Kentucky Transportation Cabinet

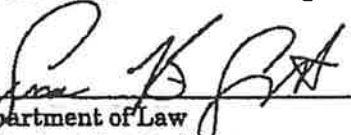
12-15-20
Date



James P. Gray II
Secretary
Kentucky Transportation Cabinet


12/17/2020
Date

Reviewed as to form and legality:



Department of Law
Lexington-Fayette Urban County Government

12/9/20
Date



Linda Gorton
Mayor
Lexington-Fayette Urban County Government

12/8/20
Date