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LEXINGTON-FAYETTE
URBAN COUNTY GOVERNMENT
BEREA ROAD
$223,000 – LARP (FD14) FUNDS

AGREEMENT BETWEEN COMMONWEALTH OF KENTUCKY TRANSPORTATION CABINET DEPARTMENT OF HIGHWAYS AND THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

THIS AGREEMENT, entered into by and between the Commonwealth of Kentucky, Transportation Cabinet, Department of Highways, hereinafter referred to as the "**Department**," and the Lexington-Fayette Urban County Government, 200 East Main Street, Lexington, KY 40507, hereinafter referred to as the Local Public Agency ("**LPA**").

WITNESSETH:

WHEREAS, the parties hereto desire to resurface Berea Road in Fayette County, which shall hereinafter be referred to as the "**Project**;"

WHEREAS, the **LPA** desires to be the lead agency and perform this **Project** to enhance the safety and reliability of roadway connections for the commuting public;

WHEREAS, the **LPA** shall refer to the applicable state requirements listed in the Project Development Guide for Local Public Agencies and any future revisions for assistance in complying with this Agreement;

WHEREAS, the **LPA** has asked the **Department** for funding assistance for costs incurred during this **Project**;

WHEREAS, the General Assembly has determined this is a worthwhile **Project** and has authorized reimbursement to the **LPA** by the **Department** in HJR 76 up to $223,000 in Local Assistance Road Program funding (FD14) for the completion of this Project, and

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WHEREAS, any cost in excess of the reimbursement funding ($223,000) for this **Project** will be the responsibility of the **LPA**.

NOW, THEREFORE, in consideration of these premises and the mutual covenants contained herein, the parties hereby agree as follows:

1. The **Department** agrees to reimburse the **LPA** up to $223,000 for completion of work by the **LPA**, or consultants, contractors, or subcontractors hired by the **LPA**, under the obligations of this Agreement for resurfacing Berea Road (CR 1305) from US 25 extending to KY 1973 for approximately 1.100 miles.

   This **Project** is designed to enhance the reliability of the highway network and safety for motorists in the area providing safe connections. Any ineligible costs or costs in excess of $223,000 are the responsibility of the **LPA**. The **LPA** further agrees that they will require, in perpetuity, the placement of a culvert or road tile, for any new entrance constructed, that effects the drainage area, surrounding any of the roads listed in this agreement. The manner as to the implementation of this requirement, shall be at the discretion of the **LPA**.

2. The **Department** has authorized up to $223,000 in Local Assistance Road Program funding (FD14) for all eligible expenses for this **Project**. This funding shall be made available for reimbursement to the **LPA** for all eligible expenses to the **Project**. The **LPA** shall be responsible for all eligible costs above the $223,000 as well as any costs deemed ineligible for reimbursement from this **Project**. Any additional funding obligated for the completion of this **Project** shall be evidenced in writing by both parties with a Supplemental Agreement.

3. 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,

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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**.

4. The effective date of this Agreement is the date of signature by the Secretary of the Transportation Cabinet. The Term of Eligible Reimbursement under this Agreement shall be three (3) years from the date of its execution unless extended or amended by written Agreement in accordance with the provisions of KRS 45A. Any and all funding obligated for any phase of this **Project** shall be available to reimburse the **LPA** for eligible work activities completed and costs incurred prior to expiration.

5. The **LPA** shall follow state specifications for each necessary phase of this **Project**. The **LPA** shall adhere to all state regulations, including KRS 45A, KRS 176, KRS 177, and all terms of this Agreement for activities related to this **Project** as lead agency. The **LPA** 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, the **LPA** is responsible to meet all other requirements and adhere to all regulations necessary to qualify for the receipt of these state funds. Concurrence must be obtained by the **LPA** 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.**

6. Should the **Project** require any design services, the **LPA** agrees to use only licensed consultants who are 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. The **LPA** shall be responsible for all **Project** design activities, which may be completed either by the **LPA's** staff or a

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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. The **LPA** 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. When applicable, the **LPA** must obtain any necessary permits or easements to allow for work to be accomplished on this **Project** and adhere to the Uniform Relocation Assistance (URA) and Real Property Acquisitions Policies Act.

7. Should the **Project** require the acquisition of any interest in real property by the **LPA**, the **LPA** 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**.

8. The **LPA** 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. The **LPA** 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 the **LPA**, 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**.

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9. The **LPA** 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. The **LPA** 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 the **LPA** 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. The **LPA** 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 state laws and regulations. The **LPA** shall provide the **Department** necessary assurance that all real property has been acquired and all displaced individuals, businesses, non-profit organizations and farms have been offered relocation assistance according to applicable state laws and regulations. The **LPA** shall provide the **Department** necessary documentation for review and approval at various stages of the acquisition process, as described in the **Department's** Right of Way Guidance Manual.

10. 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 utility or railroad coordination must

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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.

11. State construction criteria for the type of work shall be followed, 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, current edition, 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.

12. The **LPA** agrees to use only licensed contractors and subcontractors who are pre-qualified to do work for the **Department** for any necessary construction services. The **LPA** shall be responsible for all **Project** construction activities, which may be completed either by the **LPA's** staff or through the advertisement, opening of bids, selection, and contracting for contractor services in accordance with the Model Procurement Code provisions of KRS 45A and KRS 424. Specific requirements defined within KRS 45A require that the award be made to the lowest responsive bidder meeting the criteria of responsibility established by the

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Department. 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 **LPA** must receive **Department** approval for all change orders and shall have approval of the appropriate governing authority, but shall not increase the funding obligated to the **LPA** as a result of this Agreement.

13. The contractor represents that, pursuant to KRS 45A.485, they and any subcontractor performing work under the contract will be in continuous compliance with the KRS chapters listed below and have revealed to the Commonwealth any violation determinations within the previous five (5) years:

KRS Chapter 136 (CORPORATION AND UTILITY TAXES)
KRS Chapter 139 (SALES AND USE TAXES)
KRS Chapter 141 (INCOME TAXES)
KRS Chapter 337 (WAGES AND HOURS)
KRS Chapter 338 (OCCUPATIONAL SAFETY AND HEALTH OF EMPLOYEES)
KRS Chapter 341 (UNEMPLOYMENT COMPENSATION)
KRS Chapter 342 (WORKERS COMPENSATION)

The contractor represents that, pursuant to KRS 45A.607, they are not currently engaged in, and will not for the duration of the contract engage in, the boycott of a person or an entity based in or doing business with a jurisdiction with which Kentucky can enjoy open trade. Note: The term Boycott does not include actions taken for bona fide business or economic reasons, or actions specifically required by federal or state law.

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The contractor represents that they, and any subcontractor performing work under the contract, have not violated the agency restrictions contained in KRS 11A.236 during the previous ten (10) years, and pledges to abide by the restrictions set forth in such statute for the duration of the contract awarded.

The contractor further represents that, pursuant to KRS 45A.328, they have not procured an original, subsequent, or similar contract while employing an executive agency lobbyist who was convicted of a crime related to the original, subsequent, or similar contract within five (5) years of the conviction of the lobbyist.

14. The Equal Employment Opportunity Act of 1978 (the "Act"), KRS 45.560 to 45.640, applies to all State government contracts or subcontracts in an amount exceeding $500,000. The contractor shall comply with all terms and conditions of the Act.
    During the performance of this contract, the Contractor agrees as follows:
    (a) The Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex, age forty (40) and over, disability, veteran status, or national origin or.
    (b) The Contractor shall take affirmative action in regard to employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination rates of pay or other forms of compensation, and selection for training, so as to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, religion, sex, age forty (40) and over, disability, veteran status, and national origin. Such action shall include, but not be limited to the following:
    (c) The Contractor shall state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age forty (40) and over, disability, veteran status, or national origin.
    (d) The Contractor shall post notices in conspicuous places, available to employees and applicants for employment, setting forth the provisions of this non-discrimination clause.

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The Contractor shall send a notice to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding advising the said labor union or workers' representative of the Contractor's commitments under this nondiscrimination clause.

The Contractor's noncompliance with the nondiscrimination clauses of this contract shall constitute a material breach of the contract.

Each Contractor shall, for the length of the contract or at the point at which the contract is covered by this Act and until its conclusion, furnish such information as required by the Act and any rules, regulations and orders issued pursuant thereto and permit access to all books and records pertaining to his employment practices and work sites by the contracting agency and the Cabinet to ascertain compliance with the Act.

This section applies to agreements disbursing federal funds, in whole or part, only when the terms for receiving those funds mandate its inclusion.

15. The **LPA** shall be responsible for all aspects of administration, measuring, testing, and inspections to ensure the materials and work meets the **Department's** specifications of the construction contract. This includes providing daily, on-site inspection of the contractor's work activities and processing all of the paperwork associated with the construction contract, including any change orders. The **Department** shall have access to the **Project** area and may conduct field reviews of the **Project** at any time. These field reviews are intended to verify status of the **Project**, performance of the contractor, adequacy of the **LPA** oversight, conformance with all laws, regulations, and policies and provide assistance to the **LPA** as may be necessary.

16. The **LPA** 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 the **LPA** to submit billings for work performed for less than a thirty (30) day period. All charges to the

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Project shall be supported by properly executed invoices, contracts, or vouchers evidencing in proper detail the nature and propriety of the charge. The **Department** may require additional documentation at their discretion.

17. The **LPA** is responsible for ensuring that all **Project** construction activities have been completed and are responsible for providing all of the necessary paperwork as required by the construction contract. The **LPA** will conduct a field inspection to verify completion of the work in conformance with the Agreement. This documentation must be provided to the **Department's** District 7 Chief District Engineer in Lexington prior to final payment of the **Project**. When both the **LPA** and the **Department** accept the field work as complete, the **LPA'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. Upon receipt of the **Department's** Final Acceptance Report, the **LPA** will issue the final payment to the contractor with an official Release of Contractor form for signature. Within 30 days, the **LPA** shall provide the **Department** with a copy of the official Release of Contractor form, as well as proof of payment, which includes cancelled checks.

18. The **LPA** is responsible for ensuring that vendors shall be paid, upon the submission of proper invoices to the receiving agency at the prices stipulated for the supplies delivered and accepted, or services rendered. Unless otherwise specified, payment will not be made for partial deliveries accepted. Payments will be made within thirty (30) working days after receipt of goods or a vendor's invoice in accordance with KRS 45.453 and KRS 45.454.

19. 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**. To protect the public interest and maintain the original intent, the **LPA** 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 in perpetuity. In the event

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that the **Project** improvements are not maintained as a public facility, the **LPA** shall reimburse the **Department** for all costs incurred and for all funding expended pursuant to the **Project**, including any applicable interest.

20. The **LPA** shall maintain for a period of three (3) years all records of materials, equipment, and labor costs involved in the performance of work of said **Project**. In order to obtain reimbursement from the **Department** for constructing said **Project**, the **LPA** shall submit to the **Department's** District 7 Office in Lexington documented invoices of materials, equipment, and labor used on the **Project,** including certification that the work was accomplished on a publicly maintained facility.

21. No member, officer, or employee of the **Department** or the **LPA** 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 the **LPA** shall comply with the requirements of the Executive Branch Code of Ethics KRS Chapter 11A. The **LPA** 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 **LPA** shall collude or lobby on behalf of this **Project** without penalty, including but not limited to suspension or debarment.

22. To the extent permitted by law, the **LPA** shall indemnify and hold harmless the **Department** 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.

23. Either party may cancel the contract at any time for cause or may cancel without cause on 30 days written notice.

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a. 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 the **LPA**. If reimbursement under this Agreement is canceled under this section by reason other than violation of this Agreement or any applicable law by the **LPA**, its agents, employees and contractors, the **Department** shall reimburse the **LPA** according to the terms hereof for all expenses incurred under this Agreement to the date of such cancellation of reimbursement.

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

c. Any dispute concerning a question of fact in connection with the work not disposed of by Agreement between the **LPA** 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 **LPA** and the **Department** and be evidenced in writing.

24. The Kentucky General Assembly may allow for a reduction in a 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.

25. The **Department** certifies that it is in compliance with the provisions of KRS 45A.695, "Access to contractor's books, documents, papers, records, or other evidence directly pertinent to the contract." The **LPA** 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

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Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this contract 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.

26. KRS 45A.485 requires the **LPA** to certify that all contractors shall reveal to the **Department**, any final determination 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 **LPA** 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 **LPA's** cancellation of the contract and the contractor's disqualification from eligibility for future state contracts for a period of two (2) years.

    To comply with KRS 45A.485, the Contractor and all subcontractors performing work under this contract shall report any such final determination(s) of any violation(s) within the previous five (5) years to the Commonwealth by providing a list of the following information regarding any violation(s): (1) specific KRS violated, (2) date of any final determination of a violation, and (3) state agency which issued the final determination.

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A list of any disclosures made prior to award of a contract shall be attached to the contract.

The Contractor affirms that it has not violated any of the provisions of the above statutes within the previous five (5) year period, aside from violations explicitly disclosed and attached to this contract. Contractor further affirms that it will (1) communicate the above KRS 45A.485 disclosure requirements to any subcontractors and (2) disclose any subcontractor violations it becomes aware of to the Commonwealth.

27. It is understood and agreed by these parties that if any part of this contract is held by the courts to be illegal or in conflict with any law of the Commonwealth of Kentucky, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular part, term, or provision held to be invalid.

28. The **LPA** will pass a resolution authorizing the Mayor to sign this Agreement on behalf of the **LPA**. An acceptable Resolution shall contain the project name, description, amount of funds being provided and an acknowledgement that the **LPA** agrees to ratify and adopt all statements, representations, warranties, covenants, and agreements contained in the Agreement. Furthermore, by accepting the funds the **LPA** agrees to all terms and conditions stated in the Agreement. A copy of that resolution shall be attached to and made a part of this Agreement.

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

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

Linda Gorton
Mayor

DATE: _____

COMMONWEALTH OF KENTUCKY TRANSPORTATION CABINET

Rebecca W. Goodman
Secretary

DATE: _____

APPROVED AS TO FORM & LEGALITY

Signed by:
Todd Shipp
B6815741EBF664A0...

Todd Shipp
Office of Legal Services

DATE: 6/16/2026