

JEFFERSON COUNTY PUBLIC SCHOOLS
FARNSELY-KAUFMAN (KY 1934) ACCESS ROAD
ITEM NO. 5-8505.00
\$80,000 – FD39 FUNDS
PO2-625-1300002325

**AGREEMENT BETWEEN
COMMONWEALTH OF KENTUCKY
TRANSPORTATION CABINET
DEPARTMENT OF HIGHWAYS
AND
JEFFERSON COUNTY PUBLIC SCHOOLS**

THIS AGREEMENT, entered into by and between the Commonwealth of Kentucky, Transportation Cabinet, Department of Highways, hereinafter referred to as the **“Department,”** and Jefferson County Public Schools, 3332 Newburg Road, Louisville, KY 40232, hereinafter referred to as the **“JCPS”**.

WITNESSETH:

WHEREAS, the parties hereto desire to construct a new access road at the entrance to the Farnsley-Kaufman house on Cane Run Road (KY 1934) between milepoints 7.6 and 7.7, which shall hereinafter be referred to as the **“Project”**; and

WHEREAS, the **JCPS** desires to be the lead agency and perform this **Project** to provide access for the commuting public using these facilities; and

WHEREAS, the **JCPS** has asked the **Department** for funding assistance for costs incurred during the design and construction phases of this **Project**; and

WHEREAS, the **Department** agrees this is a worthwhile **Project** and is willing to reimburse the **JCPS** up to \$80,000 in state funds (FD39) for the satisfactory completion of this **Project**; and

WHEREAS, any cost in excess of the reimbursement funding (\$80,000) for this **Project** will be the responsibility of the **JCPS**.

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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 **JCPS** up to \$80,000 for completion of work by the **JCPS**, or consultants, contractors, or subcontractors hired by the **JCPS**, under the obligations of this Agreement for the following **Project**:

To design and construct a new Farnsley-Kaufman access road beginning on Cane Run Road (KY 1934) between milepoints 7.6 and 7.7. The **Project** is designed to provide access to and from the school property to reduce congestion and hazardous conditions. Any proposed change or extension to this Agreement shall be at the mutual consent of the **JCPS** and the **Department** and be evidenced in writing.

2. The **Department** has authorized up to \$80,000 in reimbursable state contingency funding (FD39) for all eligible expenses for this **Project**. The **JCPS** shall pay all **Project** expenses and only upon meeting all terms and conditions of this Agreement will be eligible to receive state reimbursement funding. All charges to the **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. 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 any Phase of the **Project** becomes unavailable for any reason including: the Kentucky General Assembly's failure to appropriate the funding, by operation of law or as the result of a reduction in funding, further reimbursement of **Project** expenditures may be denied, the **Project** may be cancelled, the timeline extended or the scope amended by the **Department** either in whole or in part without penalty. Denial of

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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. It is understood that the effective date of this Agreement is the date of signature by the Secretary of the **Department's** Transportation Cabinet. The **JCPS** shall not be eligible for reimbursement for any **Project** activity expenditure prior to the date of signature by the **Department** on this Agreement and receipt of a Notice to Proceed from the **Department**. 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 **JCPS** for eligible work activities completed and costs incurred after the effective date of this Agreement and prior to expiration.
5. The **JCPS** shall follow state specifications for each necessary phase of this **Project**. The **JCPS** 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 **JCPS** will obtain any required permits, licenses or easements required to initiate, perform, and complete work and provide documentation to the **Department's** District 5 Office in Louisville. In addition, the **JCPS** 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 **JCPS** through the **Department's** District 5 Chief District Engineer in Louisville prior to the awarding of any contract for work or materials to be used on this **Project**.
6. If federal funds are authorized for any portion of the **Project**, all necessary environmental documents must be acquired prior to any phase beyond Phase I design. With the advice and assistance of the **Department**, the **JCPS** shall ensure that all applicable environmental

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requirements are complied with including the preparation of appropriate environmental documentation prepared pursuant to the National Environmental Policy Act (NEPA) of 1969 addressing the social and environmental effects of the proposed **Project**. Adequate resources must be devoted to ensuring that all applicable environmental reviews under NEPA are completed on an expeditious basis and that the shortest existing applicable process under NEPA shall be utilized. Compliance with NEPA, Section 4(f) of 49 USC 303, Section 106 of the National Historic Preservation Act, Sections 401 and 404 of the Clean Water Act, Section 7 of the Endangered Species Act, and any other applicable environmental laws and regulations must be received to permit funding authorization by the **Department**.

7. The **JCPS** agrees to use only licensed consultants who are pre-qualified to do work for the **Department**. The **JCPS** shall be responsible for all **Project** design activities, which may be completed either by the **JCPS's** staff or a consultant that is to be selected based on qualifications. All design work to be contracted must comply with all legal advertisement and selection requirements including, but not limited to, the Model Procurement Code provisions of KRS 45A and KRS 424. The **JCPS** shall submit and obtain concurrences to the **Department's** District 5 Office in Louisville final design plans, specifications, and a total estimate prepared by a Professional Engineer licensed to practice in the Commonwealth of Kentucky and approved by the **Department** prior to any construction.
8. State design and 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 Institute of Transportation Engineers' (ITE) Manual on Uniform Traffic Control Devices (MUTCD). All work performed shall be in accordance with the **Department's** Standard Specifications for Road and Bridge

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Construction, edition 2008 as revised, and as provided in Subsection 105.01 of said Specifications. All materials furnished shall be in accordance with Subsection 106 of said Specifications to include all **Department** List of Approved Materials. These standards, specifications, and criteria are incorporated in this Agreement by this reference.

9. Should the **Project** require the acquisition of any interest in real property by the **JCPS** and the **JCPS** does not have the authority to acquire property by eminent domain, the applicability of the Uniform Relocation Assistance (URA) and Real Property Acquisitions Policies Act shall apply. The **JCPS** 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 State highway funding. In all real property acquisitions, concurrence must be obtained through the **Department's** Division of Right of Way and Utilities and shall be subject to review and approval by the **Department**.
10. The **JCPS** acknowledges that the **Department** will require the placement of a restrictive easement approved by the **Department** in the chain of title of any real property acquired or improved pursuant to the **Project** in favor of the **Department**. If the owner of any real property acquired or improved pursuant to the **Project** is different from the **Department**, then the owner shall sign and be made a party to this Agreement and the owner hereby acknowledges, covenants and consents to the placement of a restrictive easement for perpetual maintenance of the property acquired or improved pursuant to the **Project** in the chain of title in favor of the **Department** prior to final reimbursement by the **Department**.
11. Should the **Project** require any construction services, the **JCPS** agrees to use only licensed contractors and subcontractors who are pre-qualified to do work for the **Department**. The **JCPS** shall be responsible for all **Project** construction activities, which may be completed either by the **JCPS's** staff or through the advertisement, opening of bids, selection, and

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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 **Department**.

12. It is understood that the **JCPS** shall be responsible for all aspects of administration, 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 paper work associated with the construction contract, including any change orders. The **JCPS** 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 **JCPS** as a result of this Agreement. The **Department** may conduct an announced or unannounced field review of the **Project** at any time. This field review is intended to verify conformance with all laws, regulations, and policies and provide assistance to the **JCPS** where necessary.
13. The **JCPS** may submit to the **Department's** District 5 Office in Louisville 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 **JCPS** to submit billings for work performed for less than a thirty (30) day period. The **JCPS** shall provide proof of payment through appropriate documentation, which includes but is not limited to the following items: work progress completed to date, expenses, cancelled checks, bank statements, and verified affidavits. The **JCPS** shall also submit with the request for reimbursement a formal letter that certifies that the work shown on the invoice has been performed in accordance with the terms of this Agreement and approved plans and specifications, that the costs shown are verified and are true and correct, and that the request for reimbursement in no way represents any degree of duplication of payments that have or will be received from other funding sources.

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14. The **JCPS** 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 **JCPS** 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 5 Chief District Engineer in Louisville prior to final payment of the **Project**. When both the **JCPS** and the **Department** accept the field work as complete, the **JCPS's** project manager shall certify the **Project** was constructed in accordance with the plans and specifications. Upon receipt of the **Department's** Final Acceptance Report, the **JCPS** will issue the final payment to the contractor with an official Release of Contractor form for signature.
15. 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 **JCPS** 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 addition, any applicable landscaping in any project shall be maintained in an acceptable condition to include mowing, trimming, or other maintenance in perpetuity. In the event that the property is not maintained as a public facility, the **JCPS** shall reimburse the **Department** for all proceeds provided for in this **Project** including any applicable interest, unless such change in use is approved in writing by the **Department**, if applicable.
16. The **JCPS** 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 **JCPS** shall submit to the **Department's** District 5 Office in Louisville documented invoices of materials,

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equipment, and labor used on the **Project**, including certification that the work was accomplished on a publicly maintained facility.

17. No member, officer, or employee of the **Department** or the **JCPS** 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 **JCPS** shall comply with the requirements of the Executive Branch Code of Ethics KRS Chapter 11A. The **JCPS** 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 **County** shall collude or lobby on behalf of this **Project** without penalty, including but not limited to suspension or debarment.
18. To the extent permitted by law, the **JCPS** 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.
19. Either party may cancel the contract at any time for cause or may cancel without cause on 30 days written notice.
 - 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 **JCPS**. If reimbursement under this Agreement is canceled under this section by reason other than violation of this Agreement or any applicable law by the **JCPS**, its agents, employees and contractors, the **Department** shall reimburse the **JCPS** according to the terms hereof for all expenses incurred under this Agreement to the date of such cancellation of reimbursement.

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- b. The **JCPS** may seek to cancel its obligations under this Agreement at any time deemed to be in the best interest of the **JCPS** by giving thirty (30) days written notice of such request to the **Department**. If the **Department** agrees to allow the **JCPS** to cancel the Project or cancel its obligations under this Agreement, the **JCPS** 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 **JCPS** 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 **JCPS** and the **Department** and be evidenced in writing
20. 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 **JCPS** hereby acknowledges it is responsible to inform any entity it intends to hire or use as a contractor, as defined in KRS 45A.030(9), that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any 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.
21. KRS 45A.485 requires the **County** to certify that all contractors shall reveal to the **Department**, any final determination of a violation by the contractor within the previous five

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

22. The **JCPS** hereby acknowledges its duty to the **Department** to determine whether it is subject to the Single Audit Act of 1984, P.L. 98-502, and the Single Audit Act Amendments of 1996, P.L. 014-56. The **JCPS** shall follow the provisions of OMB Circular A-133 "Audits of States, Local Governments, and Non-Profit Organizations" and OMB Circular A-87 "Cost Principles for State, Local, and Indian Tribal Governments". If the **JCPS** has expended more than \$500,000 in Federal funds from all sources, the **JCPS** shall provide the **Department** with copies of their OMB A-133 audit reports.
23. The **JCPS** hereby acknowledges it is responsible to inform any entity it intends to hire or use as a contractor, as defined in KRS 45A.030(7), that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any of the contractor's books, documents, papers, records, or other evidence, which are directly pertinent to this Agreement for the purpose of financial audit or program review.
24. Furthermore, any of the contractor's books, documents, papers, records or other evidence provided to the contracting agency, the Finance and Administration Cabinet, the Auditor of

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Public Accounts, or the Legislative Research Commission which are directly pertinent to the Agreement shall be subject to public disclosure regardless of the proprietary nature of the information, unless specific information is identified and exempted and agreed to by the Secretary of the Finance and Administration Cabinet as meeting the provisions of KRS 61.878(1)(c) prior to the execution of the Agreement. The Secretary of the Finance and Administration Cabinet shall not restrict the public release of any information, which would otherwise be subject to public release if a state government agency were providing the service.

25. Any dispute concerning a question of fact in connection with the work not disposed of by Agreement between the **JCPS** 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.
26. 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.
27. The **JCPS** will pass a resolution authorizing the Superintendent to sign this Agreement on behalf of the **JCPS**. 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.

JEFFERSON COUNTY
PUBLIC SCHOOLS

COMMONWEALTH OF KENTUCKY
TRANSPORTATION CABINET

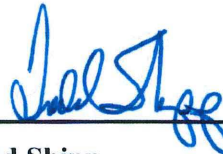
Donna Hargens
Superintendent

Michael W. Hancock
Secretary

DATE: _____

DATE: _____

APPROVED AS TO FORM & LEGALITY



Todd Shipp
Office of Legal Services

DATE: 10/15/12