

THIRD ADDENDUM AGREEMENT BETWEEN  
THE KENTUCKY TRANSPORTATION CABINET AND GENERAL COUNSEL  
LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT

2015 MAY 20 A 10: 56

This AGREEMENT is made and entered into by and between the Commonwealth of Kentucky, Transportation Cabinet, hereinafter referred to as the "Cabinet" and the Louisville/Jefferson County Metro Government, hereinafter referred to as the "RECIPIENT". The African American Heritage Foundation, Inc., a Kentucky non-profit corporation, hereinafter referred to as the "FOUNDATION", is named herein for the purposes of agreeing to the terms and conditions of this AGREEMENT and agreeing to fulfill its obligations hereunder.

WITNESSETH:

WHEREAS, the Federal Highway Administration (FHWA), has approved the Record of Decision, September 2003 for the Louisville-Southern Indiana Ohio River Bridges Project (the "ROD") which includes on Page 44, Section 4.3.4, Rehabilitation of Trolley Barn Buildings in West Louisville and outlines the disbursement of TEN MILLION and NO/100 dollars (\$10,000,000) under Section 4.3.3 (the "ROD Provision"); and

WHEREAS, the CABINET agreed to provide a minimum of 20% matching funds in the form of toll credits for this project; and

WHEREAS, the CABINET and RECIPIENT previously entered into Agreement C-04478850 (the "Original Agreement") (as hereinafter defined); and said Agreement attached hereto as **Exhibit 1** and incorporated herein as if set forth in its entirety; where the parties committed to the Trolley Barn Rehabilitation for the African American Heritage Center, and

WHEREAS, the Original Agreement outlined the disbursement of \$2,740,000 by CABINET to RECIPIENT in connection with a portion of the construction costs of the Project (as hereinafter defined); and

WHEREAS, the Original Agreement provided that the duration of the project may be changed by mutual agreement of the parties, and specified that it should be renewed for an additional two (2) years following its June 30, 2006 termination, and all Parties hereto deem it to be essential that said AGREEMENT be renewed; and

WHEREAS, all of the parties to this AGREEMENT hereby confirm and agree that (a) the source of all of the \$2,740,000 detailed in the Original Agreement were TE Funds; and (b) all such TE Funds have been disbursed in connection with reimbursement of authorized expenditures for the Project in accordance with the terms of the Original Agreement; and

WHEREAS, the RECIPIENT has agreed to accept responsibility for all administration, staffing, maintenance, and operation costs for the Project as identified under the AGREEMENT and to

renovate and rehabilitate the Trolley Barn Buildings to a habitable condition (ready for tenant fit out for uses) consistent with this Agreement;

WHEREAS, RECIPIENT has entered into a certain lease dated September 26, 2014 with FOUNDATION wherein it leased to FOUNDATION all of the Trolley Barn Real property ("Property") including the improvements located thereon for a period of ten (10) years for the sole purpose of operating the Kentucky Center for African American Heritage in accordance with KRS 148.570 et seq.; and

WHEREAS, both RECIPIENT and FOUNDATION are desirous of seeing the improvements and repairs to the Property described herein completed in accordance with the terms of this Agreement; and

WHEREAS, in order to construct the improvements and make the repairs to the Property as described herein, FOUNDATION is entering into a separate Right of Entry and Access Agreement to give RECIPIENT, its employees, agents, consultants and contractors, the FOUNDATION'S authorization, approval, and consent to enter upon the leased Property, at no cost to RECIPIENT, for the sole purpose of constructing the improvements and making the repairs to the Property. NOW, THEREFORE, in consideration of the mutual covenants and agreements herein set forth, the CABINET and the RECIPIENT hereby agree as follows:

**Section 1. Additional Payments:**

- a. The parties acknowledge that the Cabinet made an additional payment to the Recipient of \$1,762,315.75 (attached hereto as **Exhibit 2** and referred to as Addendum to Agreement C-04478850 dated February 4, 2007 and incorporated herein as if set forth in its entirety);
- b. The parties acknowledge that the Cabinet made an additional payment to the Recipient of \$5,497,684.25 (attached hereto as **Exhibit 3** and referred to as Second Addendum to Agreement C-04478850 dated August 1, 2008 and incorporated herein as if set forth in its entirety);

**Section 2. Renewal of AGREEMENT and Continuation of Project and Funding:** As expressly stated above, it is the intention of all parties that AGREEMENT C-04478850, including any modifications or amendments thereto, should be renewed every two years until completion of the designated Project.

**Section 3. Provision of Additional Funds:** The CABINET agrees to provide the RECIPIENT an additional \$1,105,000.00 to complete additional work to the Trolley Barn Rehabilitation project contained in the ROD. These funds are to be used to complete work in Buildings A, B and P along with the Connector, Courtyards and Security/Networking. Specifically, the following allocations are authorized \$500,000 to Building A, \$10,000.00 for the Connector, \$181,000 for Building P, \$84,000 for Building B, \$220,000 for the Courtyards, and \$110,000 for Security and Networking. (See attached **Exhibit 4**)

The CABINET also agrees to provide the RECIPIENT up to \$300,000 to build out Building C to house the Minority Historic Rehabilitation Craftsman Training Program.

**Section 4. Project Management Plan.** The RECIPIENT shall develop a Project Management Plan (PMP) which defines each pending design and construction milestone and establish a specific timeline, completion date, and discreet cost for each of the milestones pending to complete the Project. The PMP must demonstrate how Project cash flow will match the estimated costs of each milestone with the amount of funds to be made available by the CABINET to assure that the RECIPIENT will not, at any time, incur project costs beyond the amount of funds made available. The RECIPIENT shall manage all administrative and contractual activities associated with the Project as well as the day-to-day Project design and construction activities. Further, the RECIPIENT shall provide all Project inspections and quality control oversight and be responsible to maintain all Project records and documentation per applicable state and federal requirements. The RECIPIENT shall not enter into agreements with third parties for the execution of any of the oversight conditions outlined in the AGREEMENT, or for carrying out any Project administration or contractual activities including, but not limited to, those outlined above without the prior written approval of the CABINET, which approval shall not be unreasonably withheld, delayed, or conditioned.

**Section 5. Reporting and Monitoring.** The RECIPIENT shall maintain and comply with all reporting requirements outlined by the CABINET and FHWA. In addition, the RECIPIENT agrees to provide to the CABINET and FHWA within 60 days of execution of this agreement a full and complete analysis of the previous work completed and a full and complete accounting of all payments made by the FOUNDATION to contractors, subcontractors and suppliers including any amounts and/or retainage for work accepted but remaining unpaid and owed by the FOUNDATION provided that, within 30 days of the execution of this agreement, the FOUNDATION provides the records in its possession to the RECIPIENT who is required to perform such analysis. The RECIPIENT shall, during the remainder of the construction phase, submit to the CABINET, at least quarterly progress reports detailing the status of the Project. Said form shall be utilized by RECIPIENT for its quarterly reporting obligation. CABINET concurrence must be obtained by the RECIPIENT prior to the awarding of any additional contracts for work or materials to be used on the Project.

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 CABINET or FHWA may require additional documentation at their reasonable discretion.

All checks, invoices, contracts, vouchers, orders or purchasing documents pertaining in whole or in part to the Project shall be clearly identified and readily accessible. The RECIPIENT shall permit the CABINET and/or FHWA to conduct periodic site visits to ascertain compliance with federal and state regulations. The RECIPIENT shall maintain financial



documents for three years after project completion and final payment in accordance with 49 CFR Part 18.

Section 6. Environmental Requirements. With the advice and assistance of the CABINET, the RECIPIENT shall ensure that all applicable environmental requirements are complied with including the preparation of appropriate environmental documentation prepared pursuant to the National Environmental Policy Act of 1969 ("NEPA") addressing the effects of the proposed transportation enhancement project. The property is also subject to an Environmental Covenant which is recorded in the Jefferson County, Kentucky Clerk's Office in Deed Book 8206, Page 394.

Section 7. Restrictive Easements and Covenants: The RECIPIENT acknowledges that the property is subject to a certain restrictive easement of record in Deed Book 8485, Page 820 in the Office of the Clerk of Jefferson County, Kentucky, specifically granted to the Kentucky Heritage Council (KHC), the grantee. It is agreed that such restrictive easement may be supplemented or modified or clarified from time to time upon the consent of all of the parties to this AGREEMENT, as well as the FHWA and The Kentucky Heritage Council ("KHC"), the "grantee", under the current restrictive easement.

Section 8. Permits and Licenses. The RECIPIENT is responsible for obtaining all permits and licenses required to initiate, to perform, and to complete the Project in an appropriate and timely manner.

Section 9. Davis-Bacon and Related Acts. Unless waived by the CABINET, the RECIPIENT shall comply with the Davis-Bacon and Related Acts for contracts in excess of \$2,000 for the construction, alteration, and/or repair of public buildings or public works, including painting and decorating. These Acts require all contractors and subcontractors to pay the various classes of laborers and mechanics employed on the contract the wage rates and fringe benefits determined by the Secretary of Labor to be prevailing for corresponding classes of employees engaged on similar projects in the locality. In addition, the Act requires that certain labor standards provisions be specified in the contract awarded to the successful bidder. An applicable wage determination must also be included in the contract documents. The RECIPIENT shall refer to the Davis-Bacon and Related Acts for the requirements under this provision.

Section 10. The Contract Work Hours and Safety Standards Act. During the construction of the Project, the RECIPIENT shall comply with the Contract Work Hours and Safety Standards Act which contains weekly (after 40 hours) overtime pay requirements and applies to most Federal Contracts which may require or involve the employment of laborers and mechanics, including watchmen and guards. Section 107 of the Act provides health and safety standards on covered construction work which are administered by the Occupational Safety and Health Administration the requirements under this provision.

**Section 11. The Copeland “Anti-Kickback” Act.** The RECIPIENT shall comply with the “Anti-Kickback” section of the Copeland Act, which makes it punishable to induce any person working on a federally funded or assisted construction project to “give up any part of the compensation to which he is entitled under his contract of employment.” The RECIPIENT shall refer to the Copeland Act for the requirements under this provision

**Section 12. Title VI-Civil Rights Act of 1964.** The RECIPIENT shall comply with all requirements imposed by Title VI of the Civil Rights Act of 1964 (78 Stat.252), the Regulations of DOT issued thereunder (CFR Title 49, Subtitle A, Part 21), and the assurance by the RECIPIENT pursuant thereto.

**Section 13. Equal Employment Opportunity.** In connection with the execution of this AGREEMENT, the RECIPIENT shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age or disability. The RECIPIENT shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment without regard to their race, religion, color, sex, national origin, age, or disability. Such actions shall include, but not 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 of training, including apprenticeship. The RECIPIENT shall incorporate the foregoing requirements of this paragraph in all subcontracts for services covered by this AGREEMENT.

**Section 14. Discrimination.** Discrimination (because of race, religion, color, national origin, sex, sexual orientation, gender identity, age, or disability) is prohibited. This section applies only to contracts utilizing federal funds, in whole or in part. During the performance of this AGREEMENT, the RECIPIENT agrees as follows:

1. The RECIPIENT will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, sexual orientation, gender identity, or age. The contractor further agrees to comply with the provisions of the Americans with Disabilities Act (ADA), Public Law 101-336, and applicable federal regulations relating thereto prohibiting discrimination against otherwise qualified disabled individuals under any program or activity. The RECIPIENT agrees to provide, upon request, needed reasonable accommodations. The RECIPIENT will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability. 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 compensations; and selection for training, including apprenticeship. The RECIPIENT agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

2. The RECIPIENT will, in all solicitations or advertisements for employees placed by or on behalf of the RECIPIENT; 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.
3. The RECIPIENT 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 RECIPIENT's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The RECIPIENT will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.
4. The RECIPIENT 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.
5. The RECIPIENT 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 his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
6. In the event of the RECIPIENT's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations or orders, this contract may be cancelled, terminated or suspended in whole or in part and the RECIPIENT 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.
7. The RECIPIENT will include the provisions of paragraphs (1) through (7) of section 202 of Executive Order 11246 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor, issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The RECIPIENT will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

**Section 15. Disadvantaged Business Enterprise (DBE) Requirements.** The RECIPIENT agrees to comply with the DBE Requirements contained within 49 CFR Part 26.



Assurance. The contractor, sub-recipient or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this AGREEMENT. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of U.S. Department of Transportation-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract which may result in the termination of this contract or such other remedy as the CABINET deems appropriate. Each contract signed with a contractor (and each subcontract the prime contractor signs with the sub-contractor) must include this provision.

DBE Prompt Payment Requirement. The RECIPIENT must abide by 49 CFR Part 26.29 with regard to prompt payment mechanisms and retainage payment. If applicable, all contractors must be paid within ten (10) working days after the RECIPIENT has been paid by the CABINET for work performed or services delivered. No recipient or contractor may withhold retainage on any DBE subcontract on the Project.

Section 16. Prohibited Interest. No member, officer, or employee of the CABINET or the RECIPIENT during his tenure or for one year thereafter shall have any financial interest, direct or indirect, in this AGREEMENT or the proceeds thereof as identified in KRS 45A.340. The CABINET and the RECIPIENT shall comply with the requirements of the Executive Branch Code of Ethics KRS Chapter 11A.

Section 17. Covenant Against Contingent Fees. The RECIPIENT warrants that no person, 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. For breach or violation of this warrant, the CABINET shall have the right to annual this AGREEMENT without liability or, in its discretion, to deduct from the compensation, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

Section 18. Interest of Members of or Delegates to Congress. No funds have been or will be paid to a member or delegate to the Congress of the United States in connection with the awarding of this Federal contract. Nor shall any member of or delegate to the Congress of the United States receive any benefit arising out of this federal contract.

Section 19. Standards for the Treatment of Historic Properties. Historic preservation projects shall meet applicable Secretary or the Interiors Standards for the Treatment of Historic Properties, the Standards and Guidelines for Archeology and Historic Preservation, and all other applicable Federal or State historic property requirements prior to the payment of any monies under this AGREEMENT.

Section 20. Maintenance as Public Facilities. The RECIPIENT agrees to maintain the facilities in an acceptable condition for a public purpose in perpetuity but not limited to use as the Kentucky Center for African American Heritage. 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 RECIPIENT shall reimburse the FHWA for all proceeds provided for in the Project.

Section 21. Americans with Disabilities Act. The RECIPIENT agrees to comply with the provisions of the Americans with Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973, P.L. 93-112, and other applicable regulations relating hereto, issued by the U.S. Department of Transportation, prohibiting discrimination against otherwise qualified individuals under any program or activity receiving federal financial assistance covered by this AGREEMENT and by providing access to all facilities.

Section 22. Applicable Laws. This AGREEMENT shall be in accordance with the laws of the United States Department of Transportation, Federal Highway Administration and the Commonwealth of Kentucky.

Section 23. Hold Harmless Clause. The RECIPIENT agrees to indemnify the CABINET, to the extent RECIPIENT is permitted by Kentucky law, for injuries, damages, losses or expenses, including attorneys' fees, arising out of or resulting, directly, or indirectly, from RECIPIENT's negligence or willful misconduct, or breach of contract, provided that such claim, damage, loss, or expense is: (1) attributable to personal injury, bodily injury, sickness, death, or to injury to or destruction of property, including the loss of use resulting therefrom and (2) is not caused by the negligent act or omission or willful misconduct of the CABINET. This Hold Harmless and Indemnification Clause shall in no way be limited by any financial responsibility or insurance requirements and shall survive the termination of this Agreement.

Section 24. Audit and Inspection. The RECIPIENT shall have an audit performed in accordance with the Single Audit Act of 1984, P.L. 98-502 and the Single Audit Act Amendments of 1996, P.L. 104-156, OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations and other appropriate QMB Circulars. The RECIPIENT shall permit the CABINET, the Comptroller General of the United States and Secretary of the United States Department of Transportation, or their authorized representatives, to inspect and approve all phases of the project prior to beginning the next phase and all relevant Project data and records. The RECIPIENT shall also permit the above named persons to review audits and working papers or audit the books and accounts of the RECIPIENT pertaining to the Project. The contractor, as defined in KRS 45A.030(7), agrees 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 evident provided to the contacting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, or the Legislative Research Commission which are directly pertinent to the AGREEMENT shall be subject to public disclosure regardless of the proprietary nature of the information, unless specific information is identified and exempted and agreed to by the



Secretary of the Finance and Administration Cabinet as meeting the provisions of KRS 61.878(1)07 prior to the execution of this 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.

Section 25. Campaign Finance. The RECIPIENT swears under the penalty of perjury, as provided by KRS 523.020, that they have not knowingly violated any provisions of the campaign finance laws of the Commonwealth, and that the award of a contract to them will not violate any provisions of the campaign finance laws of the Commonwealth.

Section 26. Violations. Pursuant to KRS 45A.485, if applicable, the RECIPIENT shall reveal to the CABINET any final determination of a violation within the previous five (5) year period pursuant to KRS Chapters 139, 136, 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 law, unemployment compensation law, and workers compensation insurance law, respectively.

The RECIPIENT agrees to be in continuous compliance with the provisions of KRS Chapters 139, 136, 141, 337, 338, 341 and 342 for the duration of this AGREEMENT. Failure to reveal a final determination of a violation of the referenced statutes or comply with these statutes for the duration of this AGREEMENT shall be grounds for the cancellation of the agreement and disqualification of the RECIPIENT from eligibility for future funding for a period of two (2) years.

Section 27. Personal Service Contracts and Memoranda of Agreement. If this AGREEMENT comes under the purview of KRS 45A.690 – 45A.725, payments on personal service contracts and memoranda of agreement shall not be authorized for services rendered after disapproval of the Government Contract Review Committee unless the decision of the committee is overridden by the Secretary of Finance and Administration Cabinet or agency head, if the agency has been granted delegation authority.

Section 28. Contractor Compliance. Each contract signed by the RECIPIENT with a Contractor shall include Sections Nine (9) through Twenty-Seven (27) as set forth herein.

Section 29. Disputes. Any dispute concerning a question of fact in connection with the work not disposed of by agreement between the RECIPIENT and the CABINET 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.

Section 30. Agreement Change. Any proposed change in this AGREEMENT shall be at the mutual consent of the RECIPIENT, and the CABINET, and be evidenced in writing.

**Section 31. Termination.** The CABINET may cancel this AGREEMENT at any time deemed to be in the best interest of the CABINET by giving 30 days written notice of such cancellation to the RECIPIENT. If the AGREEMENT is cancelled under this provision, the CABINET shall reimburse the RECIPIENT according to the terms hereof for all expenses incurred under this Agreement to the date of such cancellation. The RECIPIENT reserves the right to cancel this AGREEMENT at any time deemed to be in their best interest by giving 30 days written notice of such cancellation to the CABINET. If the AGREEMENT is cancelled under this provision, the CABINET shall reimburse the RECIPIENT for all expenses incurred under this AGREEMENT according to the terms hereof to the date of such cancellation.

The provisions of Section 23 of this AGREEMENT shall remain in effect even after cancellation by any party.

IN WITNESS WHEREOF, we have hereunto set our hands.

EXAMINED:

*Michael W. Goodman*  
OFFICE OF LEGAL SERVICES

DATE: *04/20/15*

COMMONWEALTH OF KENTUCKY  
TRANSPORTATION CABINET

BY: *[Signature]*  
MICHAEL W. HANCOCK, SECRETARY

DATE: *4/22/15*

EXAMINED:  
MICHAEL J. O'CONNELL  
JEFFERSON COUNTY ATTORNEY

By: *Edward S. Carce* *5/14/15*  
ATTORNEY DATE  
Assistant Jefferson County Attorney

LOUISVILLE/JEFFERSON COUNTY  
METRO GOVERNMENT

*Ellen M. Neser* *5/12/15*  
MAYOR DATE

AFRICAN AMERICAN HERITAGE  
FOUNDATION, INC.

*Christie McCraw* *5-14-15*  
PRESIDENT DATE



**EXHIBIT 1**



KENTUCKY TRANSPORTATION CABINET  
FRANKFORT, KENTUCKY 40622  
WWW.KENTUCKY.GOV

ERNIE FLETCHER  
GOVERNOR

MAXWELL C. BAILEY  
SECRETARY

October 8, 2004

Mr. Charles Horton  
Assistant Director  
Louisville Metro Housing  
745 West Main Street  
Louisville, Kentucky 40202

Subject: Transportation Enhancement Contract Amendment - \$2,740,000  
Trolley Barn Rehabilitation for the African-American Heritage Center ~ C-04478850

Dear Mr. Horton:

Enclosed is the executed contract between the Transportation Cabinet and the City of Owensboro. The contract represents the federal share approved for the subject project.

Also enclosed is a copy of the environmental clearance document for this project from the Cabinet's Division of Environmental Analysis. Please examine the findings and follow any special instructions included therein. Failure to follow these provisions is a violation of federal law and will adversely affect your project.

We have also enclosed several blank standard invoice forms for your use in requesting reimbursement. Additional copies of the standard invoice form may also be obtained at the following website: [www.transportation.kv.gov/multimodal](http://www.transportation.kv.gov/multimodal). The contract number needs to be on every invoice submitted for reimbursement under this contract. With each invoice submitted, please indicate any qualified Disadvantaged Business Enterprise (DBE) contractor for which reimbursement is being requested. This information is very important to the Cabinet's record keeping. Please remember to submit quarterly progress reports detailing the status of your project. If you have any questions, please contact Ron Schneider in this office at (502)564-7686.

Sincerely,

Michael L. Hill, P. E.  
Director  
Division of Multimodal Programs

MLH/RPS/LMD

Enclosures

c: Shawn Dyer  
Ronnie O'Nan/Rita Wallen  
David Morgan  
Chris Phillips - District 5  
Randall Embry - KIPDA



**The Commonwealth of  
Kentucky  
(APPROVED)**

**CONTRACT**

Page 1 of 1  
 Contract No. C-04478850  
 Requisition No:  
**IMPORTANT**  
 Show Contract number on all packages,  
 invoices, and correspondence.

Description **HANG LOU TROLLEY BARN 05** Sub Type: **Contract-Standard**

Effective Date: **05 Oct 2004** Expiration Date: **30 Jun 2008**

Administered By: **MICHAEL HILL, DIRECTOR** Cited Authority: **KRS 177.280 Agreements of local government units**  
 Telephone: **(502) 564-7686 ext ( )** Issued By: **MICHAEL HILL, DIRECTOR**

Credit Card Payment:  No  Yes Card Number:

**LOUISVILLE JEFFERSON CO METRO  
 METRO HOUSING & COMMUNITY DEV 745 WEST MAIN  
 ST STE 300  
 LOUISVILLE KY 40202  
 USA**

Line	Description	Quantity	Unit Issue	Unit Price	Unit Price	Total Price
0001	HANG LOUISVILLE TROLLEY BARN 05	.0000	Each	\$ .00000	\$2,740,000.00	\$2,740,000.00

**Extended Description**  
 Rehabilitation of Historic Transportation Building. Rehabilitation of the Louisville Trolley Barn for use as the African-American Heritage Center associated with the Louisville Bridge Project. This is a Transportation Enhancement Project. The Transportation Cabinet will reimburse 100 percent of the project with Federal Funds and the match will be provided by Toll Credits. No additional state transportation funds in this project.

**Additional Markings and Instructions**

KYTC DIV OF MULTIMODAL PROG ATTN: MICHAEL HILL, DIRECTOR STATION: W5-23-01 200 MERO STREET FRANKFORT KY 40622 Phone: (502) 564-7686 ( ) Fax: ( ) -	KYTC DIV OF MULTIMODAL PROG ATTN: MICHAEL HILL, DIRECTOR STATION: W5-23-01 200 MERO STREET FRANKFORT KY 40622 Phone: (502) 564-7686 ( ) Fax: ( ) -
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<This address is applicable to all line items>

Total Order Amount **\$2,740,000.00**



AGREEMENT BETWEEN  
THE KENTUCKY TRANSPORTATION CABINET  
AND C-04478850  
LOUISVILLE METRO HOUSING AND COMMUNITY DEVELOPMENT DEPARTMENT  
TROLLEY BARN REHABILITATION FOR THE AFRICAN-AMERICAN HERITAGE CENTER  
\$2,740,000

Description and Budget Summary (Attachment A), which is attached to and made a part of this AGREEMENT. The RECIPIENT shall undertake and complete the work as described in Attachment A in accordance with the terms and conditions of this AGREEMENT and any applicable regulations or directive issued by the CABINET or the Federal Highway Administration (FHWA).

Section 2. Duration of Project. It is understood that the effective date of this AGREEMENT shall be the date signed by the Secretary of the Transportation Cabinet. This AGREEMENT shall terminate June 30, 2006, at which time this AGREEMENT shall be renewed for an additional two years, absent either party invoking Section 30. This AGREEMENT shall be further renewed until project completion on or before June 30, 2010, absent either party invoking Section 30. Nothing in this AGREEMENT should be construed to prevent the Duration of the Project from being changed by mutual agreement of the CABINET and the RECIPIENT.

Section 3. Project Funding. It is expressly understood that federal funds for this project are being provided by the Federal Highways Administration (FHWA) through the CABINET. The federal share of the total cost of this AGREEMENT shall not exceed \$2,740,000 (the amount indicated on Attachment A) unless otherwise approved in writing by the CABINET with the concurrence of FHWA. The RECIPIENT agrees to secure the matching funds in the amount sufficient, together with the authorized federal funds, to assure funding for completion of the project.

Section 4. Allowable Costs. The Project costs referred to in this AGREEMENT shall be those costs shown on Attachment A. The CABINET shall reimburse the RECIPIENT upon request in accordance with the Attachment, subject to the provisions of Section 27 hereof. It is understood that no enhancement funds shall be used for staffing, maintenance or operation of the Project.

Section 5. Reporting and Monitoring. The RECIPIENT shall maintain and comply with all reporting requirements outlined by the CABINET and FHWA. The RECIPIENT shall submit quarterly progress reports detailing the status of the project. The recording and reporting of any purchases shall be in accordance with the requirements of the Kentucky Revised Statutes. CABINET concurrence must be

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THE KENTUCKY TRANSPORTATION CABINET  
AND C-04478850  
LOUISVILLE METRO HOUSING AND COMMUNITY DEVELOPMENT DEPARTMENT  
TROLLEY BARN REHABILITATION FOR THE AFRICAN-AMERICAN HERITAGE CENTER  
\$2,740,000**

obtained by the RECIPIENT prior to the awarding of any AGREEMENT for work or materials to be used on this Project.

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 CABINET or FHWA may require additional documentation at their discretion.

All checks, invoices, contracts, vouchers, orders or purchasing documents pertaining in whole or in part to the Project shall be clearly identified and readily accessible. The RECIPIENT shall permit the CABINET and or FHWA to conduct periodic site visits to ascertain compliance with federal and state regulations. The RECIPIENT shall maintain financial documents for three years after project completion and final payment in accordance with 49 CFR Part 18.

Section 6. Environmental Requirements. With the advice and assistance of the CABINET, the RECIPIENT shall ensure that all applicable environmental requirements are complied with including the preparation of appropriate environmental documentation prepared pursuant to the National Environmental Policy Act of 1969 addressing the effects of the proposed transportation enhancement project.

Section 7. Land Acquisition. Should the transportation enhancement project require the acquisition of land by the RECIPIENT and RECIPIENT does not have the authority to acquire property by eminent domain, the applicability of the Uniform Relocation Assistance and Real Property Acquisitions Policies Act, 49 CFR Part 24 (as amended) (URA) shall be limited to the following requirements: (1) Prior to making an offer for the property, the property owner shall be advised in writing that should negotiations fail to result in an amicable agreement, the RECIPIENT will not be able to acquire the property and (2) The property owner shall be informed in writing by the RECIPIENT of what the RECIPIENT believes to be the fair market value of the property.

The RECIPIENT shall ensure that all property acquisition, relocation assistance, and property management are completed in a fair and equitable manner pursuant to all state and Federal laws and regulations governing acquisition of properties for public use. (1) The RECIPIENT shall either adopt in

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\$2,740,000**

writing the CABINET'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 CABINET's Division of Right of Way and Utilities and, if applicable, the Federal Highway Administration (FHWA). (2) The RECIPIENT shall conduct all appraisals and appraisal reviews using personnel meeting the CABINET's minimum qualifications and listed on the CABINET's pre-qualified appraisers and reviewers list. (3) If the RECIPIENT chooses to use an acquisition consultant on all or any portion of a project, the selection of the consultant shall be in accordance with the CABINET's Division of Right of Way Guidance Manual. (4) The RECIPIENT 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 and federal laws and regulations. (5) The RECIPIENT shall provide the CABINET and, when applicable, FHWA, necessary assurance that all properties have been acquired and all displaced individuals, businesses, non-profit organizations and farms have been offered relocation assistance according to applicable state and Federal laws and regulations. (6) The RECIPIENT shall provide the CABINET, and when applicable, FHWA, necessary documentation for review and approval at various stages of the acquisition process, as described in the CABINET's Right of Way and Relocation Assistance Guidance Manual.

The CABINET shall: (1) Review all appraisal reports to ensure proper appraisal practice and procedures as well as compliance with state and Federal laws and regulations. (2) Approve final value conclusion by the Director, Division of Right of Way and Utilities.

The RECIPIENT shall provide to the CABINET the following information on each parcel to be acquired:

- An accurate description and plat delineating the shape and location of the property
- The total size of the property (and area to be acquired, if applicable)
- The current owner of the property
- A listing of improvements on the property
- The type of title to be acquired by the RECIPIENT



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- If partial acquisitions, the type of restrictions and/or improvements to be put on the property including a draft easement of conservation activities
- Name and telephone number of a local contact person

Should the acquisition of land result in the displacement of a tenant-occupant, such displacement shall be subject to the requirements of the URA, as set out in implementing regulations 49 CFR Part 24. A displaced tenant shall be eligible for moving expenses and any other relocation expenses for which they might qualify.

In all acquisitions, concurrence must be obtained through the CABINET's Division of Right of Way and Utilities prior to the formal hiring of any appraiser and all appraisals shall meet the appraisal requirements of the CABINET and shall be subject to review and approval by the CABINET and FHWA.

Section 8. Restrictive Easements. The RECIPIENT acknowledges that the property will require the placement of a restrictive easement upon the deed in favor of a third party to be determined by the CABINET. The RECIPIENT further consents to the easement to be placed on the property at the time of purchase and prior to reimbursement from the CABINET.

Section 9. Permits and Licenses. The RECIPIENT is responsible for obtaining all permits and licenses required to initiate, to perform, and to complete all phases of the enhancement project in an appropriate and timely manner.

Section 10. Davis-Bacon and Related Acts. Unless waived by the CABINET, the RECIPIENT shall comply with the Davis-Bacon and Related Acts for contracts in excess of \$2,000 for the construction, alteration, and/or repair of public buildings or public works, including painting and decorating. These Acts require all contractors and subcontractors to pay the various classes of laborers and mechanics employed on the contract the wage rates and fringe benefits determined by the Secretary of Labor to be prevailing for corresponding classes of employees engaged on similar projects in the locality. In addition, the Act requires that certain labor standards provisions be specified in the contract awarded to the successful bidder. An applicable wage determination must also be included in the

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contract documents. The RECIPIENT shall refer to the Davis-Bacon and Related Acts for the requirements under this provision.

Section 11. The Contract Work Hours and Safety Standards Act. During the construction of the Project, the RECIPIENT shall comply with the Contract Work Hours and Safety Standards Act which contains weekly (after 40 hours) overtime pay requirements and applies to most Federal Contracts which may require or involve the employment of laborers and mechanics, including watchmen and guards. Section 107 of the Act provides health and safety standards on covered construction work which are administered by the Occupational Safety and Health Administration (OSHA). The RECIPIENT shall refer to the Contract Work Hours and Safety Standards Act for the requirements under this provision.

Section 12. The Copeland "Anti-Kickback" Act. The RECIPIENT shall comply with the "Anti-Kickback" section of the Copeland Act, which makes it punishable to induce any person working on a federally funded or assisted construction project to "give up any part of the compensation to which he is entitled under his contract of employment." The RECIPIENT shall refer to the Copeland Act for the requirements under this provision.

Section 13. Title VI - Civil Rights Act of 1964. The RECIPIENT shall comply with all requirements imposed by Title VI of the Civil Rights Act of 1964 (78 Stat. 252), the Regulations of DOT issued thereunder (CFR Title 49, Subtitle A, Part 21), and the assurance by the RECIPIENT pursuant thereto.

Section 14. Equal Employment Opportunity. In connection with the execution of this AGREEMENT, the RECIPIENT shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, or disability: The RECIPIENT shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, national origin, age, or disability. Such actions 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;

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and selection of training, including apprenticeship. The RECIPIENT shall incorporate the foregoing requirements of this paragraph in all subcontracts for services covered by this AGREEMENT.

Section 15. Disadvantaged Business Enterprise (DBE) Requirements. The RECIPIENT agrees to comply with the DBE Requirements contained within 49 CFR Part 26.

Assurance. The contractor, sub-recipient or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this AGREEMENT. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of U. S. Department of Transportation-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the CABINET deems appropriate. Each contract signed with a contractor (and each subcontract the prime contractor signs with a sub-contractor) must include this provision.

DBE Prompt Payment Requirement. The RECIPIENT must abide by 49 CFR Part 26.29 with regard to prompt payment mechanisms and retainage payment. If applicable, all contractors must be paid within ten (10) working days after the RECIPIENT has been paid by the CABINET for work performed or services delivered. No recipient or contractor may withhold retainage on any subcontract on this project.

Section 16. Prohibited Interest. No member, officer, or employee of the CABINET or the RECIPIENT during his tenure or for one year thereafter shall have any financial interest, direct or indirect, in this AGREEMENT or the proceeds thereof as identified in KRS 45A.340. The CABINET and the RECIPIENT shall comply with the requirements of the Executive Branch Code of Ethics KRS Chapter 11A.

Section 17. Covenant Against Contingent Fees. The RECIPIENT warrants that no person, 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. For breach or violation of this warranty, the CABINET shall have the right to annul this AGREEMENT without



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liability or, in its discretion, to deduct from the compensation, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

Section 18. Interest of Members of or Delegates to Congress. No funds have been or will be paid to a member or delegate to the Congress of the United States in connection with the awarding of this Federal contract. Nor shall any member of or delegate to the Congress of the United State receive any benefit arising out of this federal contract.

Section 19. Standards for the Treatment of Historic Properties. Historic preservation projects shall meet applicable Secretary of the Interior's Standards for the Treatment of Historic Properties, the Standards and Guidelines for Archeology and Historic Preservation, and all other applicable Federal or State historic property requirements prior to the payment of any monies under this AGREEMENT.

Section 20. Maintenance as Public Facilities. The RECIPIENT agrees to maintain the facilities in an acceptable condition and for a public purpose 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 RECIPIENT shall reimburse the FHWA for all proceeds provided for in this enhancement project.

Section 21. Americans with Disabilities Act. The RECIPIENT agrees to comply with the provisions of the Americans with Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973, P.L. 93-112, and other applicable Federal regulations relating hereto, issued by the U.S. Department of Transportation, prohibiting discrimination against otherwise qualified individuals under any program or activity receiving federal financial assistance covered by this AGREEMENT and by providing access to all facilities.

Section 22. Applicable Laws. This AGREEMENT shall be in accordance with the laws of the United States Department of Transportation, Federal Highway Administration and the Commonwealth of Kentucky.

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Section 23. Hold Harmless Clause. The RECIPIENT shall indemnify and hold harmless the CABINET and all of its officers, agents, and employees from all suits, actions, or claims of any character because of any injuries or damages received by any person, persons, or property resulting from negligent implementation of any phase of the Project or occurring on or near the project site.

Section 24. Audit and Inspection. The RECIPIENT shall have an audit performed in accordance with the Single Audit Act of 1984, OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations and other appropriate OMB Circulars. The RECIPIENT shall permit the CABINET, the Comptroller General of the United States and Secretary of the United States Department of Transportation, or their authorized representatives, to inspect and approve all phases of the project prior to beginning the next phase and all relevant Project data and records. The RECIPIENT shall also permit the above named persons to review audits and working papers or audit the books and accounts of the RECIPIENT pertaining to the Project. The results of the Department of Local Government's audit review should be submitted to the CABINET within 30 days after completion of the audit review for each year containing project information. The contractor, as defined in KRS 45A.030(7), agrees 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 AGREEMENT for the purpose of financial audit or program review. Furthermore, any books, documents, papers, records, or other evidence provided to the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, or the Legislative Research Commission which are directly pertinent to the AGREEMENT shall be subject to public disclosure regardless of the proprietary nature of the information, unless specific information is identified and exempted and agreed to by the Secretary of the Finance and Administration Cabinet as meeting the provisions of KRS 61.878(1)© prior to the execution of the AGREEMENT. The Secretary of

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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.

Section 25. Campaign Finance. The contractor swears under the penalty of perjury, as provided by KRS 523.020, that neither he/she nor the entity which he/she represents has knowingly violated any provisions of the campaign finance laws of the Commonwealth, and that the award of a contract to him/her or the entity which he/she represents will not violate any provisions of the campaign finance laws of the Commonwealth.

Section 26. Violations. Pursuant to KRS 45A.485, the contractor shall reveal to the CABINET any final determination of a violation within the previous five (5) year period pursuant to KRS Chapter 139, 136, 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 law, unemployment compensation law, and workers compensation insurance law, respectively.

The Contractor agrees to be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342 for the duration of this AGREEMENT. Failure to reveal a final determination of a violation of the reference statutes or to comply with these statutes for the duration of this AGREEMENT shall be grounds for the cancellation of the agreement and disqualification of the contractor from eligibility for future state contracts for a period of two (2) years.

Section 27. Personal Service Contracts and Memoranda of Agreement. If this AGREEMENT comes under the purview of KRS 45A.690 - 45A.725, payments on personal service contracts and memoranda of agreement shall not be authorized for services rendered after disapproval of the Government Contract Review Committee unless the decision of the committee is overridden by the Secretary of Finance and Administration Cabinet or agency head, if the agency has been granted delegation authority.



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Section 28. Disputes. Any dispute concerning a question of fact in connection with the work not disposed of by agreement between the RECIPIENT and the CABINET 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.

Section 29. Agreement Change. Any proposed change in this AGREEMENT shall be at the mutual consent of the RECIPIENT and the CABINET and be evidenced in writing.

Section 30. Termination. The CABINET may cancel this AGREEMENT at any time deemed to be in the best interest of the CABINET by giving 30 days written notice of such cancellation to the RECIPIENT. If the AGREEMENT is canceled under this provision, the CABINET shall reimburse the RECIPIENT according to the terms hereof for all expenses incurred under this AGREEMENT to the date of such cancellation. The RECIPIENT reserves the right to cancel this AGREEMENT at any time deemed to be in their best interest by giving 30 days written notice of such cancellation to the CABINET. If the AGREEMENT is canceled under this provision, the CABINET shall reimburse the RECIPIENT for all expenses incurred under this AGREEMENT according to the terms hereof to the date of such cancellation.

The provisions of Section 20 of this AGREEMENT shall remain in effect even after cancellation by either party.

IN WITNESS WHEREOF, we have hereunto set our hands.

EXAMINED:

OFFICE OF LEGAL SERVICES

DATE: 8/15/04

COMMONWEALTH OF KENTUCKY  
TRANSPORTATION CABINET

MAXWELL C. BAILEY, SECRETARY

DATE: 10-5-04

EXAMINED:

ATTORNEY

DATE: 9/14/04

LOUISVILLE/JEFFERSON COUNTY  
METRO GOVERNMENT

MAYOR

DATE: 9-20-04

A RESOLUTION AUTHORIZING THE MAYOR TO ACCEPT A GRANT FROM THE KENTUCKY TRANSPORTATION CABINET, IN THE AMOUNT OF APPROXIMATELY \$2,740,000 FOR TROLLEY BARN REHABILITATION.

Sponsored By: Councilman Bright

WHEREAS, The Kentucky Transportation Cabinet has made funding available under the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), and

WHEREAS, the Louisville/Jefferson County Metro Government wishes to take advantage of this funding opportunity through its Louisville Metro Housing & Community Development.

NOW, THEREFORE, BE IT RESOLVED BY THE LEGISLATIVE COUNCIL OF THE LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT (THE COUNCIL) AS FOLLOWS:

SECTION I: The Mayor is hereby authorized to accept an ISTEA grant from the Kentucky Transportation Cabinet in the amount of approximately \$2,740,000 for Trolley Barn Rehabilitation for the African American Heritage Museum, LTD.

SECTION II: This Resolution shall take effect upon its passage and approval.

Kathleen J. Herroy  
Kathleen J. Herroy  
Metro Council Clerk

Kelly Downard  
Kelly Downard  
President of the Council

Jerry E. Abramson  
Jerry E. Abramson  
Mayor

9-15-04  
Approval Date

APPROVED AS TO FORM AND LEGALITY

Irv Maze  
Jefferson County Attorney

LOUISVILLE METRO COUNCIL  
ADOPTED  
September 9, 2004

BY: William P. O'Brien

GK/Resolution to KY Transportation Cabinet for Trolley Barn  
Ky Transportation Cabinet For Trolley Barn ROC bkn Draft 2  
Ky Transportation Cabinet For Trolley Barn ROC bkn Draft 3 Clean Final

**AGREEMENT BETWEEN**  
**THE KENTUCKY TRANSPORTATION CABINET**  
**AND**  
**LOUISVILLE METRO HOUSING AND COMMUNITY DEVELOPMENT DEPARTMENT**  
**TROLLEY BARN REHABILITATION FOR THE AFRICAN-AMERICAN HERITAGE CENTER**  
**\$2,740,000**

C-04478850

**ATTACHMENT A**  
**PROJECT DESCRIPTION & BUDGET SUMMARY**

**TROLLEY BARN RENOVATION PROJECT BUDGET**

(prepared June 28, 2004)

**Phase II**

> Bldg. F (interior finishes)	\$ 1,353,149
> Bldg. C** (Preservation Training Center	\$ 1,222,747
-Site Preparation	
-Construction	
-Mechanicals & Plumbing	
-HVAC	
-Electrical	
-General Conditions	
CM Fees	\$ 675,000
> Owner's Representative	\$ 75,000
> A/E	\$ 300,000
> ESS	\$ 100,000
	<b>\$ 3,725,896</b>

**AMOUNT OF THIS CONTRACT** **\$ 2,740,000\***

**TOTAL PROJECT COSTS**

\*\* Does not include salaries, furnishings, equipment for Historic Preservation Training Program

**\*THE CURRENT CONTRACT WILL BE FOR \$2,740,000. ADDITIONAL FUNDS WILL BE PROGRAMMED AS THEY BECOME AVAILABLE AND THE CONTRACT WILL BE AMENDED ACCORDINGLY.**



**EXHIBIT 2**

**ADDENDUM TO  
AGREEMENT C-04478850 BETWEEN  
THE KENTUCKY TRANSPORTATION CABINET  
AND  
LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT  
BY AND THROUGH ITS  
LOUISVILLE METRO DEPARTMENT OF FAMILY SERVICES, HOUSING &  
COMMUNITY DEVELOPMENT:  
TROLLEY BARN REHABILITATION FOR THE AFRICAN-AMERICAN  
HERITAGE CENTER  
\$1,762,315.75**

This AGREEMENT is made and entered into by and between the Commonwealth of Kentucky, Transportation Cabinet, hereinafter referred to as the "CABINET" and the Louisville/Jefferson County Metro Government acting by and through the Louisville Metro Department of Family Services, Housing & Community Development, hereinafter referred to as the "RECIPIENT". The African American Heritage Foundation, Inc., a Kentucky non-profit corporation, hereinafter referred to as the "FOUNDATION", as a Sub-Recipient under this AGREEMENT, joins herein for the purposes of agreeing to the terms and conditions of this AGREEMENT and agreeing to fulfill its obligations hereunder.

**WITNESSETH:**

**WHEREAS**, the United States Congress approved the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), P. L. 102-240, and amended Chapter 1 of Title 23, United States Code by adding Section 133, which established a Surface Transportation Program; and

**WHEREAS**, Section 1007(a) of the ISTEA, as reaffirmed by the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21), P. L. 105-178, which added 23 U.S.C., 133 (d) (2), requires that ten percent of the new Surface Transportation Program funds be available for transportation enhancement activities, and

**WHEREAS**, the Surface Transportation Program established federal funding for transportation enhancement activities ("TE Funds") which are defined under Section 1007 (c) of the ISTEA, and reaffirmed by TEA-21, which amended 23 U.S.C. 101 (a); and

**WHEREAS**, the Federal Highway Administration (FHWA), has approved the Record of Decision, September 2003 for the Louisville-Southern Indiana Ohio River Bridges Project (the "ROD") which includes on Page 44, Section 4.3.4, Rehabilitation of Trolley Barn Buildings in West Louisville and outlines the disbursement of TEN MILLION AND NO/100 DOLLARS (\$10,000,000) under Section 4.3.4 (the "ROD Provision"); and

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\$1,762,315.75**

**WHEREAS**, the CABINET agreed to provide a minimum of 20% matching funds in the form of toll credits for this project; and

**WHEREAS**, AGREEMENT C-04478850 specified that it should be renewed for an additional two (2) years following its June 30, 2006 termination, and all Parties hereto deem it to be essential that said AGREEMENT be renewed; and

**WHEREAS**, the CABINET and RECIPIENT have previously entered into that certain Agreement C-04478850 (the "Original Agreement") outlining the disbursement of \$2,740,000 by CABINET to RECIPIENT in connection with a portion of the construction costs of the Project (as hereinafter defined); and

**WHEREAS**, all of the parties to this AGREEMENT hereby confirm and agree that (a) the source of all of the \$2,740,000 detailed in the Original Agreement were TE Funds; and (b) all such TE Funds have been disbursed in connection with reimbursement of authorized expenditures for the Project in accordance with the terms of the Original Agreement; and

**WHEREAS**, the CABINET and the FOUNDATION, but not the RECIPIENT, entered into that certain Agreement (the "Cabinet/Foundation Agreement") dated February 11, 2005, which agreement attempted to modify and supplement the terms of the Original Agreement; and

**WHEREAS**, the parties now wish to declare null and void the Cabinet/Foundation Agreement; and

**WHEREAS**, the parties hereto agree and acknowledge that the FOUNDATION incurred liabilities (hereinafter "Outstanding Construction Costs") in the amount of ONE MILLION NINE HUNDRED EIGHTEEN THOUSAND FIFTEEN DOLLARS AND SIXTY FOUR CENTS (\$1,918,015.64) for construction and other activities in excess of the amount of funds permitted pursuant to AGREEMENT C-04478850, that the Contractors and Sub-Contractors who provided the services that form the basis of the Outstanding Construction Costs have not been paid for their services, that some of said Contractors and Sub-Contractors have filed liens against the Project; and



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**WHEREAS**, The CABINET, the RECIPIENT and the FOUNDATION deem it essential that the Outstanding Construction Costs be paid to the Contractors and Sub-Contractors as soon as is possible, and that RECIPIENT insure that all liens pertaining to said Outstanding Construction Costs are removed; and

**WHEREAS**, the RECIPIENT has agreed to accept responsibility for all administration, staffing, maintenance and operation costs for the Project as identified under the AGREEMENT:

**NOW THEREFORE**, in consideration of the mutual covenants and agreements herein set forth, the CABINET and the RECIPIENT hereby agree as follows:

**Section 1. Outstanding Construction Costs**: It is understood and agreed by all parties hereto that the Trolley Barn Rehabilitation for the African American Heritage Center (the "Project") exceeded the total of funds available pursuant to the Original Agreement, in terms of construction and obligated construction expenses, by an amount fixed by the RECIPIENT'S Project Manager as approaching ONE MILLION NINE HUNDRED TWENTY ONE THOUSAND EIGHT HUNDRED NINETY TWO DOLLARS AND THIRTY NINE CENTS (\$1,921,892.39). The parties acknowledge that the entirety of the \$2,740,000.00 available pursuant to Agreement C-04478850 has been expended, with additional expenditures approaching said sum of \$1,921,892.39, with no current ability by the Foundation to pay such obligations. Following correspondence and discussions in September 2006 and continuing until the present time, agreement has been reached wherein the CABINET will advance to the RECIPIENT sufficient funds to pay all allowable obligations.

**Section 2. Allowable Outstanding Construction Costs**: On October 13, 2006 the RECIPIENT forwarded to the CABINET a binder containing invoices representing the totality of outstanding construction costs. Said invoices totaled \$1,921,892.39. Following review by the CABINET'S external auditors, and review of backup documentation for the submitted invoices, the CABINET reduced the total of invoices by the sum of \$96,420.50, to the sum of \$1,825,222.98. Upon further review by the CABINET'S external auditors, the sum of \$45,962.88 has been disqualified as representing charges that were not authorized by the Project's architect. Additionally, the sum of \$16,944.50 has been disqualified, representing legal fees incurred in relation to

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\$1,762,315.75**

the stop work order in this matter. Hence the total sum to be advanced by the CABINET to the RECIPIENT is \$1,762,315.75.

**Section 3. Payment of Outstanding Construction Costs:** Upon receipt of the sum specified above, RECIPIENT agrees to make prompt payment of all allowed outstanding construction costs as computed above. RECIPIENT further agrees to timely file with the CABINET documentation of all payments made pursuant to this AGREEMENT. RECIPIENT additionally agrees to promptly certify to the CABINET that all liens filed against the property involved herein have been removed following payment of the outstanding construction costs.

The CABINET does acknowledge that subsequent issues may arise regarding payment of retainage, with the possibility that additional liens may be filed against the property. Cabinet and Recipient agree and acknowledge that neither party has a legal obligation to pay any additional funds for construction costs for the Project. RECIPIENT acknowledge its obligations regarding prompt payment to Contractors upon its receipt from Cabinet of the amount of the outstanding Construction costs, pursuant to this Addendum.

**Section 4. Repayment to the Cabinet:** Following transfer by the CABINET to RECIPIENT of the sum of \$1,762,315.75 for payment of allowable outstanding construction costs on behalf of the FOUNDATION, it shall be the obligation of the FOUNDATION to repay the CABINET in full. There is no obligation of the Recipient for repayment to Cabinet of any said costs. All parties hereto, including without limitation the FOUNDATION, agree and acknowledge that the CABINET shall have no obligation to pay or provide any funds remaining in the allocation included in the relevant section of the ROD until such time as all conditions set forth in this AGREEMENT are met and the entirety of the \$1,762,315.75 has been repaid to the CABINET.

**Section 5. Renewal of AGREEMENT and Continuation of Project and Funding:** As expressly stated above, it is the intention of all parties that AGREEMENT C-04478850, including any modifications or amendments thereto, should be renewed every two years until completion of the designated Project. Toward that end, all parties hereto, the CABINET, the RECIPIENT, and the FOUNDATION, agree to continue discussions toward renewal of said AGREEMENT upon disbursement of funds to the RECIPIENT for payment of outstanding construction costs. The parties hereto agree to



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resume discussions of all relevant topics, including but not limited to, resumption of disbursement of funds pursuant to the ROD, resumption of construction, compression of schedule of disbursement of funds, utilization of debt financing and repayment of loans, as well as any other relevant topics.

All Parties hereto, including the CABINET, the RECIPIENT and the FOUNDATION, specifically agree that the "Cabinet/Foundation Agreement" dated February 11, 2005, and referenced herein above, is terminated, and declared null and void, as of the date of execution of this ADDENDUM to AGREEMENT C-04478850.

**Section 6. Reporting and Monitoring.** The RECIPIENT shall maintain and comply with all reporting requirements outlined by the CABINET and FHWA. The RECIPIENT shall, during the remainder of the construction phase, submit to the CABINET, at least quarterly, progress reports detailing the status of the Project. A sample form for quarterly reporting by the RECIPIENT is attached hereto as Exhibit A. Said form shall be utilized by RECIPIENT for its quarterly reporting obligation. CABINET concurrence must be obtained by the RECIPIENT prior to the awarding of any additional contracts for work or materials to be used on this Project other than the Existing Contracts. CABINET concurrence is not required on any amendment to any Existing Contract, provided that the aggregate costs of any increase or decrease to the Existing Contracts does not exceed the Cost Breakdown, attached hereto as Exhibit C.

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 CABINET or FHWA may require additional documentation at their reasonable discretion.

All checks, invoices, contracts, vouchers, orders or purchasing documents pertaining in whole or in part to the Project shall be clearly identified and readily accessible. The RECIPIENT and the FOUNDATION shall permit the CABINET and or FHWA to conduct periodic site visits to ascertain compliance with federal and state



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BY AND THROUGH ITS  
LOUISVILLE METRO DEPARTMENT OF FAMILY SERVICES, HOUSING &  
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regulations. The RECIPIENT shall maintain financial documents for three years after project completion and final payment in accordance with 49 CFR Part 18.

**Section 7. Environmental Requirements.** With the advice and assistance of the CABINET, the RECIPIENT shall ensure that all applicable environmental requirements are complied with including the preparation of appropriate environmental documentation prepared pursuant to the National Environmental Policy Act of 1969 addressing the effects of the proposed transportation enhancement project.

**Section 8. Restrictive Easements.** The RECIPIENT acknowledges that the property is subject to that certain restrictive easement of record in Deed Book 8485, Page 820 in the Office of the Clerk of Jefferson County, Kentucky, as such restrictive easement may be supplemented or modified or clarified from time to time, upon the consent of all of the parties to this AGREEMENT, as well as the FHWA and The Kentucky Heritage Council ("KHC"), the "grantee" under the current restrictive easement.

**Section 9. Permits and Licenses.** The RECIPIENT is responsible for obtaining or causing the FOUNDATION to obtain, all permits and licenses required to initiate, to perform, and to complete all phases of the enhancement project in an appropriate and timely manner.

**Section 10. Davis-Bacon and Related Acts.** Unless waived by the CABINET, the RECIPIENT shall comply with the Davis-Bacon and Related Acts for contracts in excess of \$2,000 for the construction, alteration, and/or repair of public buildings or public works, including painting and decorating. These Acts require all contractors and subcontractors to pay the various classes of laborers and mechanics employed on the contract the wage rates and fringe benefits determined by the Secretary of Labor to be prevailing for corresponding classes of employees engaged on similar projects in the locality. In addition, the Act requires that certain labor standards provisions be specified in the contract awarded to the successful bidder. An applicable wage determination must also be included in the contract documents. The RECIPIENT shall refer to the Davis-Bacon and Related Acts for the requirements under this provision.

**Section 11. The Contract Work Hours and Safety Standards Act.** During the construction of the Project, the RECIPIENT shall comply with the Contract Work Hours

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**Section 12.** The Copeland "Anti-Kickback" Act. The RECIPIENT shall comply with the "Anti-Kickback" section of the Copeland Act, which makes it punishable to induce any person working on a federally funded or assisted construction project to "give up any part of the compensation to which he is entitled under his contract of employment." The RECIPIENT shall refer to the Copeland Act for the requirements under this provision.

**Section 13.** Title VI - Civil Rights Act of 1964. The RECIPIENT shall comply with all requirements imposed by Title VI of the Civil Rights Act of 1964 (78 Stat. 252), the Regulations of DOT issued thereunder (CFR Title 49, Subtitle A, Part 21), and the assurance by the RECIPIENT pursuant thereto.

**Section 14.** Equal Employment Opportunity. In connection with the execution of this AGREEMENT, the RECIPIENT shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, or disability. The RECIPIENT shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, national origin, age, or disability. Such actions 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 of training, including apprenticeship. The RECIPIENT shall incorporate the foregoing requirements of this paragraph in all subcontracts for services covered by this AGREEMENT.

**Section 15.** Disadvantaged Business Enterprise (DBE) Requirements. The RECIPIENT agrees to comply with the DBE Requirements contained within 49 CFR Part 26.



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**Assurance.** The contractor, sub-recipient or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this AGREEMENT. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of U. S. Department of Transportation-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the CABINET deems appropriate, Each contract signed with a contractor (and each subcontract the prime contractor signs with a sub-contractor) must include this provision.

**DBE Prompt Payment Requirement.** The RECIPIENT must abide by 49 CFR Part 26.29 with regard to prompt payment mechanisms and retainage payment. If applicable, all contractors must be paid within ten (10) working days after the RECIPIENT has been paid by the CABINET for work performed or services delivered. No recipient or contractor may withhold retainage on any subcontract on this project.

**Section 16. Prohibited Interest.** No member, officer, or employee of the CABINET or the RECIPIENT during his tenure or for one year thereafter shall have any financial interest, direct or indirect, in this AGREEMENT or the proceeds thereof as identified in KRS 45A.340. The CABINET and the RECIPIENT shall comply with the requirements of the Executive Branch Code of Ethics KRS Chapter 11A.

**Section 17. Covenant Against Contingent Fees.** The RECIPIENT warrants that no person, 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. For breach or violation of this warranty, the CABINET shall have the right to annul this AGREEMENT without liability or, in its discretion, to deduct from the compensation, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

**Section 18. Interest of Members of or Delegates to Congress.** No funds have been or will be paid to a member or delegate to the Congress of the United States in connection with the awarding of this Federal contract. Nor shall any member of or delegate to the Congress of the United State receive any benefit arising out of this federal contract.



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COMMUNITY DEVELOPMENT:**

**TROLLEY BARN REHABILITATION FOR THE AFRICAN-AMERICAN  
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**Section 19. Standards for the Treatment of Historic Properties.** Historic preservation projects shall meet applicable Secretary or the Interiors Standards for the Treatment of Historic Properties, the Standards and Guidelines for Archeology and Historic Preservation, and all other applicable Federal or State historic property requirements prior to the payment of any monies under this AGREEMENT.

**Section 20. Maintenance as Public Facilities.** The RECIPIENT agrees to maintain the facilities in an acceptable condition and for a public purpose 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 RECIPIENT shall reimburse the FHWA for all proceeds provided for in this enhancement project.

**Section 21. Americans with Disabilities Act.** The RECIPIENT agrees to comply with the provisions of the Americans with Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973, P.L. 93-112, and other applicable Federal regulations relating hereto, issued by the U.S. Department of Transportation, prohibiting discrimination against otherwise qualified individuals under any program or activity receiving federal financial assistance covered by this AGREEMENT and by providing access to all facilities.

**Section 22. Applicable Laws.** This AGREEMENT shall be in accordance with the laws of the United States Department of Transportation, Federal Highway Administration and the Commonwealth of Kentucky.

**Section 23. Hold Harmless Clause.** The RECIPIENT shall indemnify and hold harmless the CABINET and all of its officers, agents, and employees from all suits, actions, or claims of any character because of any injuries or damages received by any person, persons, or property resulting from negligent implementation of any phase of the Project or occurring on or near the project site.

**Section 24. Audit and Inspection.** The RECIPIENT shall have an audit performed in accordance with the Single Audit Act of 1984, OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations and other appropriate QMB Circulars. The RECIPIENT shall permit the CABINET, the Comptroller General of the United States and Secretary of the United States Department of Transportation, or

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their authorized representatives, to inspect and approve all phases of the project prior to beginning the next phase and all relevant Project data and records. The RECIPIENT shall also permit the above named persons to review audits and working papers or audit the books and accounts of the RECIPIENT pertaining to the Project. The results of the Department of Local Government's audit review should be submitted to the CABINET within 30 days after completion of the audit review for each year containing project information. The contractor, as defined in KRS 45A.030(7), agrees 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 AGREEMENT for the purpose of financial audit or program review. Furthermore, any books, documents, papers, records, or other evidence provided to the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, or the Legislative Research Commission which are directly pertinent to the AGREEMENT shall be subject to public disclosure regardless of the proprietary nature of the information, unless specific information is identified and exempted and agreed to by the Secretary of the Finance and Administration Cabinet as meeting the provisions of KRS 61.878(1)07 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.

**Section 25. Campaign Finance.** The contractor swears under the penalty of perjury, as provided by KRS 523.020, that neither he/she nor the entity which he/she represents has knowingly violated any provisions of the campaign finance laws of the Commonwealth, and that the award of a contract to him/her or the entity which he/she represents will not violate any provisions of the campaign finance laws of the Commonwealth.

**Section 26. Violations.** Pursuant to KRS 45A.485, the contractor shall reveal to the CABINET any final determination of a violation within the previous five (5) year period pursuant to KRS Chapter 139, 136, 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 law, unemployment compensation law, and workers compensation insurance law, respectively.



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The Contractor agrees to be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342 for the duration of this AGREEMENT. Failure to reveal a final determination of a violation of the reference statutes or to comply with these statutes for the duration of this AGREEMENT shall be grounds for the cancellation of the agreement and disqualification of the contractor from eligibility for future state contracts for a period of two (2) years.

**Section 27. Personal Service Contracts and Memoranda of Agreement.** If this AGREEMENT comes under the purview of KRS 45A.690 - 45A.725, payments on personal service contracts and memoranda of agreement shall not be authorized for services rendered after disapproval of the Government Contract Review Committee unless the decision of the committee is overridden by the Secretary of Finance and Administration Cabinet or agency head, If the agency has been granted delegation authority.

**Section 28. Disputes.** Any dispute concerning a question of fact in connection with the work not disposed of by agreement between the RECIPIENT and the CABINET 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.

**Section 29. Agreement Change.** Any proposed change in this AGREEMENT shall be at the mutual consent of the RECIPIENT, and the CABINET, and be evidenced in writing.

**Section 30. Termination.** The CABINET may cancel this AGREEMENT at any time deemed to be in the best interest of the CABINET by giving 30 days written notice of such cancellation to the RECIPIENT. If the AGREEMENT is canceled under this provision, the CABINET shall reimburse the RECIPIENT according to the terms hereof for all expenses incurred under this AGREEMENT to the date of such cancellation. The RECIPIENT reserves the right to cancel this AGREEMENT at any time deemed to be in their best interest by giving 30 days written notice of such cancellation to the CABINET. If the AGREEMENT is canceled under this provision, the CABINET shall reimburse the RECIPIENT for all expenses incurred under this AGREEMENT according to the terms hereof to the date of such cancellation.



ADDENDUM TO  
AGREEMENT C-04478850 BETWEEN  
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AND

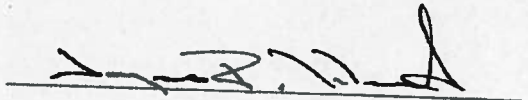
LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT  
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The provisions of Section 24 of this AGREEMENT shall remain in effect even after cancellation by any party.

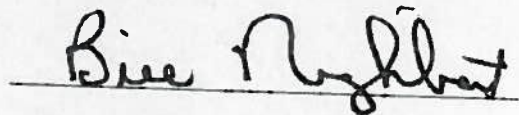
IN WITNESS WHEREOF, we have hereunto set our hands.

EXAMINED:

COMMONWEALTH OF KENTUCKY  
TRANSPORTATION CABINET



OFFICE OF LEGAL SERVICES



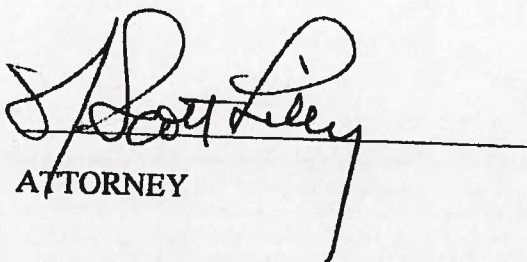
WILLIAM NIGHBERT, SECRETARY

DATE: Feb. 2, 2007

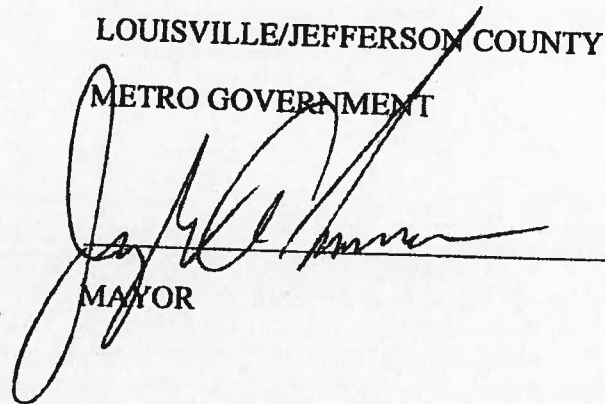
DATE: 02/04/07

EXAMINED:

LOUISVILLE/JEFFERSON COUNTY  
METRO GOVERNMENT



ATTORNEY



MAYOR

**ADDENDUM TO  
AGREEMENT C-04478850 BETWEEN  
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DATE: \_\_\_\_\_

DATE: 1-31-07

AFRICAN AMERICAN  
HERITAGE FOUNDATION, INC.

*Clest Lanier, President*

CLEST LANIER, PRESIDENT

DATE: January 30, 2007

**EXHIBIT 3**



**SECOND ADDENDUM AGREEMENT BETWEEN  
THE KENTUCKY TRANSPORTATION CABINET  
AND  
LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT**

This AGREEMENT is made and entered into by and between the Commonwealth of Kentucky, Transportation Cabinet, hereinafter referred to as the "Cabinet" and the Louisville/Jefferson County Metro Government, hereinafter referred to as the "RECIPIENT". The African American Heritage Foundation, Inc., a Kentucky non-profit corporation, hereinafter referred to as the "FOUNDATION", is named herein for the purposes of agreeing to the terms and conditions of this AGREEMENT and agreeing to fulfill its obligations hereunder.

**WITNESSETH:**

**WHEREAS**, the United States Congress approved the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), P.L. 102-2240, and amended Chapter 1 of Title 23, United States Code by adding Section 133, which established a Surface Transportation Program; and

**WHEREAS**, Section 1007(a) of the ISTEA, as reaffirmed by the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21), P.L. 105-178, which added 23 U.S.C., 133(d)(2), requires that ten percent of the new Surface Transportation Program funds be available for transportation enhancement activities; and

**WHEREAS**, the Surface Transportation Program established federal funding for transportation enhancement activities ("TE Funds") which are defined under Section 1007(c) of the ISTEA, and reaffirmed by TEA-21, which amended 23 U.S.C. 101 (a); and

**WHEREAS**, the Federal Highway Administration (FHWA), has approved the Record of Decision, September 2003 for the Louisville-Southern Indiana Ohio River Bridges Project (the "ROD") which includes on Page 44, Section 4.3.4, Rehabilitation of Trolley Barn Buildings in West Louisville and outlines the disbursement of TEN MILLION AND NO/100 dollars (\$10,000,000) under Section 4.3.4 (the "ROD Provision"); and

**WHEREAS**, the CABINET agreed to provide a minimum of 20% matching funds in the form of toll credits for this project; and

**WHEREAS**, AGREEMENT C-04478850 specified that it should be renewed for an additional two (2) years following its June 30, 2006 termination, and all Parties hereto deem it to be essential that said AGREEMENT be renewed; and

**WHEREAS**, the CABINET and RECIPIENT previously entered into Agreement C-04478850 (the "Original Agreement") outlining the disbursement of \$2,740,000 by CABINET to RECIPIENT in connection with a portion of the construction costs of the Project (as hereinafter defined); and said Agreement attached hereto as **Exhibit 1** and incorporated herein as if set forth in its entirety; and

**WHEREAS**, all of the parties to this AGREEMENT hereby confirm and agree that (a) the source of all of the \$2,740,000 detailed in the Original Agreement were TE Funds; and (b) all such TE Funds have been disbursed in connection with reimbursement of authorized expenditures for the Project in accordance with the terms of the Original Agreement; and

**WHEREAS**, the CABINET and the FOUNDATION, but not the RECIPIENT, entered into a certain Agreement (the "Cabinet/Foundation Agreement") dated February 11, 2005, which agreement attempted to modify and supplement the terms of the Original Agreement; and

**WHEREAS**, the parties now wish to declare null and void the Cabinet/Foundation Agreement; it is further agreed that the FOUNDATION shall not exercise any control and/or oversight over the execution of this **SECOND ADDENDUM AGREEMENT**; and

**WHEREAS**, the CABINET and the RECIPIENT desire to renew the status of the Project, reaffirming the basic tenets of the Trolley Barn restoration project, declaring null and void the previous agreement with the FOUNDATION, and accelerating the provision of the remaining federal funds for the Project; and

**WHEREAS**, the RECIPIENT has agreed to accept responsibility for all administration, staffing, maintenance and operation costs for the Project as identified under the AGREEMENT and to renovate and rehabilitate the Trolley Barn Buildings to a habitable condition (ready for tenant fit out for uses) consistent with this Agreement;

**NOW THEREFORE**, in consideration of the mutual covenants and agreements herein set forth, the CABINET and the RECIPIENT hereby agree as follows:

**Section 1. Additional Payment:** The parties acknowledge that the Cabinet made an additional payment to the Recipient of \$1,762,315.75 (attached hereto as **Exhibit 2** and referred to as Addendum to Agreement C-04478850 dated February 4, 2007 and incorporated herein as if set forth in its entirety);

**Section 2. Renewal of AGREEMENT and Continuation of Project and Funding:** As expressly stated above, it is the intention of all parties that **AGREEMENT C-04478850**, including any modifications or amendments thereto,

should be renewed every two years until completion of the designated Project. The CABINET and the RECIPIENT agree to resume disbursement of funds pursuant to the ROD, resumption of construction, compression of schedule of disbursement of funds, utilization of debt financing and repayment of loans, as well as any other relevant topics.

All Parties hereto, including the CABINET, the RECIPIENT and the FOUNDATION, specifically agree that the Cabinet/Foundation Agreement dated February 11, 2005, and referenced herein above, is terminated, and declared null and void, as of the date of execution of this Second Addendum to AGREEMENT C-04478850.

**Section 3. Provision of Additional Funds.** The Cabinet agrees to provide the Recipient an additional \$5,497,684.25 in TE funds to fully fund the \$10 million commitment to the Trolley Barn Rehabilitation project contained in the ROD. Approximately half of the \$5,497,684.25 shall be made available immediately upon execution of this Agreement with the remaining funds to be provided within one year after this Agreement has been finalized.

**Section 4. Project Management Plan.** The RECIPIENT shall develop a Project Manager Plan (PMP) which defines each pending design and construction milestone and establish a specific timeline, completion date, and discreet cost for each of the milestones pending to complete the Project. The PMP must demonstrate how Project cash flow will match the estimated costs of each milestone with the amount of funds to be made available by the CABINET to assure that the RECIPIENT will not, at any time, incur project costs beyond the amount of funds made available. The RECIPIENT shall manage all administrative and contractual activities associated with the Project as well as the day to day Project design and construction activities. Further the RECIPIENT shall provide all Project inspections and quality control oversight and be responsible to maintain all Project records and documentation per applicable state and federal requirements. The RECIPIENT shall not enter into agreements with third parties for the execution of any of the conditions outlined in the AGREEMENT, or for carrying out any Project administration or contractual activities including, but not limited to, those outlined above.

**Section 5. Reporting and Monitoring.** The RECIPIENT shall maintain and comply with all reporting requirements outlined by the CABINET and FHWA. In addition, the RECIPIENT agrees to provide to the CABINET and FHWA within 60 days of execution of this agreement a full and complete analysis of the previous work completed and a full and complete accounting of all payments made by the FOUNDATION to contractors, subcontractors and suppliers including any amounts and/or retainage for work accepted but remaining unpaid and owed by the FOUNDATION provided that, within 30 days of the execution of this agreement, the FOUNDATION provides the records in its possession to the RECIPIENT who is required to perform such analysis. The RECIPIENT shall,



during the remainder of the construction phase, submit to the CABINET, at least quarterly, progress reports detailing the status of the Project. Said form shall be utilized by RECIPIENT for its quarterly reporting obligation. CABINET concurrence must be obtained by the RECIPIENT prior to the awarding of any additional contracts for work or materials to be used on the Project.

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 CABINET or FHWA may require additional documentation at their reasonable discretion.

All checks, invoices, contracts, vouchers, orders or purchasing documents pertaining in whole or in part to the Project shall be clearly identified and readily accessible. The RECIPIENT shall permit the CABINET and/or FHWA to conduct periodic site visits to ascertain compliance with federal and state regulations. The RECIPIENT shall maintain financial documents for three years after project completion and final payment in accordance with 49 CFR Part 18.

**Section 6. Environmental Requirements.** With the advice and assistance of the CABINET, the RECIPIENT shall ensure that all applicable environmental requirements are complied with including the preparation of appropriate environmental documentation prepared pursuant to the National Environmental Policy Act of 1969 addressing the effects of the proposed transportation enhancement project.

**Section 7. Restrictive Easements.** The RECIPIENT acknowledges that the property is subject to a certain restrictive easement of record in Deed Book 8485, Page 820 in the Office of the Clerk of Jefferson County, Kentucky, specifically granted to the Kentucky Heritage Council (KHC), the grantee. It is agreed that such restrictive easement may be supplemented or modified or clarified from time to time, upon the consent of all of the parties to this AGREEMENT, as well as the FHWA and The Kentucky Heritage Council ("KHC"), the "grantee", under the current restrictive easement.

**Section 8. Permits and Licenses.** The RECIPIENT is responsible for obtaining all permits and licenses required to initiate, to perform, and to complete the Project in an appropriate and timely manner.

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requires that certain labor standards provisions be specified in the contract awarded to the successful bidder. An applicable wage determination must also be included in the contract documents. The RECIPIENT shall refer to the Davis-Bacon and Related Acts for the requirements under this provision.

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**Section 13. Equal Employment Opportunity.** In connection with the execution of this AGREEMENT, the RECIPIENT shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, or disability. The RECIPIENT shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment, without regard to their race, religion, color, sex, national origin, age, or disability. Such actions 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 of training, including apprenticeship. The RECIPIENT shall incorporate the foregoing requirements of this paragraph in all subcontracts for services covered by this AGREEMENT.

**Section 14. Disadvantaged Business Enterprise (DBE) Requirements.** The RECIPIENT agrees to comply with the DBE Requirements contained within 49 CFR Part 26.

**Assurance.** The contractor, sub-recipient or sub-contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this AGREEMENT. The contractor shall carry out applicable requirements of 49 CRR Part 26 in the award and administration of U. S. Department of Transportation-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the CABINET deems appropriate. Each contract signed with a contractor (and each subcontract the prime contractor signs with the sub-contractor) must include this provision.

**DBE Prompt Payment Requirement.** The RECIPIENT must abide by 49 CFR Part 26.29 with regard to prompt payment mechanisms and retainage payment. If applicable, all contractors must be paid within ten (10) working days after the RECIPIENT has been paid by the CABINET for work performed or services delivered. No recipient or contractor may withhold retainage on any DBE subcontract on the Project.

**Section 15. Prohibited Interest.** No member, officer, or employee of the CABINET or the RECIPIENT during his tenure or for one year thereafter shall have any financial interest, direct or indirect, in this AGREEMENT or the proceeds thereof as identified in KRS 45A.340. The CABINET and the RECIPIENT shall comply with the requirements of the Executive Branch Code of Ethics KRS Chapter 11A.

**Section 16. Covenant Against Contingent Fees.** The RECIPIENT warrants that no person, 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. For breach or violation of this warrant, the CABINET shall have the right to annul this AGREEMENT without liability or, in its discretion, to deduct from the compensation, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

**Section 17. Interest of Members of or Delegates to Congress.** No funds have been or will be paid to a member or delegate to the Congress of the United States in connection with the awarding of this Federal contract. Nor shall any member of or delegate to the Congress of the United States receive any benefit arising out of this federal contract.

**Section 18. Standards for the Treatment of Historic Properties.** Historic preservation projects shall meet applicable Secretary or the Interiors Standards for the Treatment of Historic Properties, the Standards and Guidelines for Archeology and Historic Preservation, and all other applicable Federal or State historic property requirements prior to the payment of any monies under this AGREEMENT.



**Section 19. Maintenance as Public Facilities.** The RECIPIENT agrees to maintain the facilities in an acceptable condition for a public purpose in perpetuity but not limited to use as the Kentucky Center for African American Heritage. 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 RECIPIENT shall reimburse the FHWA for all proceeds provided for in the Project.

**Section 20. Americans with Disabilities Act.** The RECIPIENT agrees to comply with the provisions of the Americans with Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973, P.L. 93-112, and other applicable Federal regulations relating hereto, issued by the U.S. Department of Transportation, prohibiting discrimination against otherwise qualified individuals under any program or activity receiving federal financial assistance covered by this AGREEMENT and by providing access to all facilities.

**Section 21. Applicable Laws.** This AGREEMENT shall be in accordance with the laws of the United States Department of Transportation, Federal Highway Administration and the Commonwealth of Kentucky.

**Section 22. Hold Harmless Clause.** The RECIPIENT shall indemnify and hold harmless the CABINET and all of its officers, agents, and employees from all suits, actions, or claims of any character because of any injuries or damages received by any person, persons, or property resulting from negligent implementation of any phase of the Project or occurring on or near the project site.

**Section 23. Audit and Inspection.** The RECIPIENT shall have an audit performed in accordance with the Single Audit Act of 1984, P.L. 98-502 and the Single Audit Act Amendments of 1996, P.L. 104-156, OMB Circular A-133, Audits of States, Local Governments and Non-Profit Organizations and other appropriate QMB Circulars. The RECIPIENT shall permit the CABINET, the Comptroller General of the United States and Secretary of the United States Department of Transportation, or their authorized representatives, to inspect and approve all phases of the project prior to beginning the next phase and all relevant Project data and records. The RECIPIENT shall also permit the above named persons to review audits and working papers or audit the books and accounts of the RECIPIENT pertaining to the Project. The contractor, as defined in KRS 45A.030(7), agrees 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 evident provided to the contacting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, or the Legislative Research Commission which are directly pertinent to the AGREEMENT shall be subject to public disclosure regardless of

the proprietary nature of the information, unless specific information is identified and exempted and agreed to by the Secretary of the Finance and Administration Cabinet as meeting the provisions of KRS 61.878(1)07 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.

**Section 24. Campaign Finance.** The RECIPIENT swears under the penalty of perjury, as provided by KRS 523.020, that they have not knowingly violated any provisions of the campaign finance laws of the Commonwealth, and that the award of a contract to them will not violate any provisions of the campaign finance laws of the Commonwealth.

**Section 25. Violations.** Pursuant to KRS 45A.485, if applicable, the RECIPIENT shall reveal to the CABINET any final determination of a violation within the previous five (5) year period pursuant to KRS Chapter 139, 136, 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 law, unemployment compensation law, and workers compensation insurance law, respectively.

The RECIPIENT agrees to be in continuous compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341 and 342 for the duration of this AGREEMENT. Failure to reveal a final determination of a violation of the reference statutes or to comply with these statutes for the duration of this AGREEMENT shall be grounds for the cancellation of the agreement and disqualification of the RECIPIENT from eligibility for future funding for a period of two (2) years.

**Section 26. Personal Service Contracts and Memoranda of Agreement.** If this AGREEMENT comes under the purview of KRS 45A.690 – 45A.725, payments on personal service contracts and memoranda of agreement shall not be authorized for services rendered after disapproval of the Government Contract Review Committee unless the decision of the committee is overridden by the Secretary of Finance and Administration Cabinet or agency head, if the agency has been granted delegation authority.

**Section 27. Contractor Compliance.** Each contract signed by the RECIPIENT with a Contractor shall include Sections Nine (9) through Twenty-five (25) as set forth herein.

**Section 28. Disputes.** Any dispute concerning a question of fact in connection with the work not disposed of by agreement between the RECIPIENT and the CABINET 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.

**Section 29. Agreement Change.** Any proposed change in this AGREEMENT shall be at the mutual consent of the RECIPIENT, and the CABINET, and be evidenced in writing.

**Section 30. Termination.** The CABINET may cancel this AGREEMENT at any time deemed to be in the best interest of the CABINET by giving 30 days written notice of such cancellation to the RECIPIENT. If the AGREEMENT is cancelled under this provision, the CABINET shall reimburse the RECIPIENT according to the terms hereof for all expenses incurred under this Agreement to the date of such cancellation. The RECIPIENT reserves the right to cancel this AGREEMENT at any time deemed to be in their best interest by giving 30 days written notice of such cancellation to the CABINET. If the AGREEMENT is cancelled under this provision, the CABINET shall reimburse the RECIPIENT for all expenses incurred under this AGREEMENT according to the terms hereof to the date of such cancellation.

The provisions of Section 23 of this AGREEMENT shall remain in effect even after cancellation by any party.

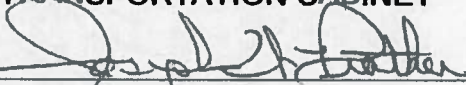
IN WITNESS WHEREOF, we have hereunto set our hands.

EXAMINED:

  
OFFICE OF LEGAL SERVICES

COMMONWEALTH OF KENTUCKY  
TRANSPORTATION CABINET

BY:

  
JOSEPH W. PRATHER,  
SECRETARY

DATE:

7/31/08

DATE:

8/1/08

EXAMINED:

  
ATTORNEY

7/30/08  
Date

LOUISVILLE/JEFFERSON COUNTY  
METRO GOVERNMENT

  
MAYOR

7-25-08  
Date

AFRICAN AMERICAN  
HERITAGE FOUNDATION, INC.

\_\_\_\_\_  
PRESIDENT

\_\_\_\_\_  
Date



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IN WITNESS WHEREOF, we have hereunto set our hands.

EXAMINED:

Judd Sharp  
OFFICE OF LEGAL SERVICES

COMMONWEALTH OF KENTUCKY  
TRANSPORTATION CABINET

BY:

Joseph W. Prather  
JOSEPH W. PRATHER,  
SECRETARY

DATE: 7/31/08

DATE: 8/1/08

EXAMINED:

LOUISVILLE/JEFFERSON COUNTY  
METRO GOVERNMENT

\_\_\_\_\_  
ATTORNEY

\_\_\_\_\_  
Date

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
Date

AFRICAN AMERICAN  
HERITAGE FOUNDATION, INC.

Christopher J. McCray  
PRESIDENT  
BOARD CHAIR

7/17/08  
Date

**EXHIBIT 4**

**African American  
Heritage Center Work to be Completed 10/15/09**

<b>Building A</b>	
Casework	\$20,000.00
Floor Finish	\$300,000.00
Black Out Shades	\$40,000.00
African Doors	\$4,000.00
Acoustical Treatment	\$85,000.00
Rotunda Ceiling	\$10,000.00
Rotunda Glass Wall Lighting	\$4,000.00
Contingency	\$37,000.00
<b>Total</b>	<b>\$500,000.00</b>

<b>Connector</b>	
Floor Finish	\$7,000.00
Vestibule Wall Sconces	\$2,000.00
Contingency	\$1,000.00
<b>Total</b>	<b>\$10,000.00</b>

<b>Building P</b>	
Floor Finishes	\$110,000.00
Casework	\$15,000.00
Lockers	\$8,000.00
Vestibule Wall Sconces	\$1,000.00
Walls & Doors	\$30,000.00
Contingency	\$17,000.00
<b>Total</b>	<b>\$181,000.00</b>

<b>Building B</b>	
Walls and Doors	\$30,000.00
Floor Finishes	\$25,000.00
Stage	\$5,000.00
Casework	\$5,000.00
HVAC	\$2,000.00
Electrical	\$10,000.00
Contingency	\$7,000.00
<b>Total</b>	<b>\$84,000.00</b>

<b>Building C</b>	
Walls and Doors	\$30,000.00
Floor Finishes	\$20,000.00
HVAC, Plumbing, Electric	\$190,000.00
Contingency	\$24,000.00
<b>Total</b>	<b>\$264,000.00</b>

<b>Building D</b>	
Walls and Doors	\$15,000.00
Plumbing	\$10,000.00
Floor Finishes	\$17,000.00
Stairs	\$14,000.00
Mechanical Room Slab	\$5,000.00
HVAC	\$35,000.00
Electrical	\$45,000.00
Contingency	\$14,000.00
<b>Total</b>	<b>\$165,000.00</b>

<b>Courtyards</b>	
17th Street	
- Amphitheater	
- Electrical	
- Additional Concrete	
<b>Total</b>	<b>\$150,000.00</b>
Muhammad Ali	
- Landscape	
<b>Total</b>	<b>\$50,000.00</b>
Contingency	\$20,000.00
<b>Total</b>	<b>\$220,000.00</b>

<b>Security/Networking</b>	
All Buildings	\$100,000.00
Contingency	\$10,000.00
<b>Total</b>	<b>\$110,000.00</b>

**Project Total \$1,524,000.00**

WORK TO BE COMPLETED, EXCLUSIVE OF BUILDINGS C & D = \$1,105,000 (2009 ESTIMATE)





# DOCUMENT APPROVAL FORM

THIS FORM MUST BE ATTACHED TO ALL DOCUMENTS SUBMITTED FOR MAYOR'S SIGNATURE, ROUTE AS LISTED BELOW.

**THIS DOCUMENT RECOMMENDED FOR MAYOR'S SIGNATURE**

ORIGINATOR OF DOCUMENT

SIGNATURE APPROVALS		DATE
AGENCY/DEPARTMENT DIRECTOR	/	
CHIEF FINANCIAL OFFICER	/	
COUNTY ATTORNEY	<i>Edward S. Carls, Asst County Attorney</i>	<i>5/4/15</i>
DEPUTY MAYOR/SPECIAL COUNSEL		

DOCUMENT NAME  
*Third Addendum Agreement*

SUMMARY OF DOCUMENT

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CONTACT PERSON	TELEPHONE
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DATE NEEDED \_\_\_\_\_ FOR PICK-UP  TO BE MAILED

DATE APPROVED BY MAYOR	<b>INSTRUCTIONS FROM THE MAYOR</b>