



## DOCUMENT APPROVAL FORM

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

THIS DOCUMENT RECOMMENDED FOR MAYOR'S SIGNATURE

ORIGINATOR OF DOCUMENT John Callihan, Director of Transportation	
SIGNATURE APPROVALS	
AGENCY/DEPARTMENT DIRECTOR <i>John Callihan</i>	6/28/2017 Director of Transportation
OFFICE OF MANAGEMENT AND BUDGET	
COUNTY ATTORNEY	
CHIEF / SPECIAL COUNSEL	

DOCUMENT NAME KYTC/Metro MOA - Supplemental #1 - Dixie Do-Over	
SUMMARY OF DOCUMENT Supplemental MOA for the Dixie Do-Over project. This is the small project at the I-264 and Dixie interchange. This supplemental provides additional state funds for previously incurred design cost. This will allow for a changer order with the design consultant. No local ufnds involved. This allows Metro to received \$47,940 in additional funds for the project.	
CONTACT PERSON: John Callihan	TELEPHONE 502-574-8140
DATE NEEDED	28-July-17

DATE APPROVED BY MAYOR

INSTRUCTIONS FROM THE MAYOR



**COMMONWEALTH OF KENTUCKY  
TRANSPORTATION CABINET**

Frankfort, Kentucky 40622  
www.transportation.ky.gov/

**Matthew G. Bevin**  
Governor

**Greg Thomas**  
Secretary

June 12, 2017

The Honorable Gregory Fischer, Mayor  
Louisville-Jefferson County Metro Government  
527 West Jefferson Street  
Louisville KY 40202

Dear Mayor Fischer:

The Kentucky Transportation Cabinet has prepared the enclosed Supplemental Agreement No. 1 whereby the Cabinet will provide up to an additional \$47,940 in reimbursable state funds to Louisville-Jefferson County Metro Government. This funding will be used for the design phase of the US 31W Dixie Highway project improvements identified as Item Number 5-478.01. Please see the agreement for more details. The maximum state funding commitment for 5-478, 5-478.01, and 5-478.7 (and any other projects directly associated with Metro's ongoing TIGER-funded Dixie Highway project) remains \$12,255,000.

We request that you sign both copies of this agreement and a resolution as requested in Section 19. Please return the signed copies of the agreement and the resolution to Linda Inman, Kentucky Transportation Cabinet, Division of Program Management, 200 Mero Street, Frankfort, KY 40622. Upon receipt, we will execute the agreement and authorize funding for this project. One fully executed copy will be returned to Louisville Metro Government for your use and retention.

Sincerely,

A handwritten signature in blue ink, appearing to read "Greg Thomas".

Greg Thomas  
Secretary

GT:lpi

Enclosures (2)

c: Patty Dunaway, P.E., State Highway Engineer  
Matt Bullock, P.E., Chief District Engineer, D-5  
Travis Thompson, P.E., Project Development, D-5



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**AGREEMENT BETWEEN  
COMMONWEALTH OF KENTUCKY  
TRANSPORTATION CABINET  
DEPARTMENT OF HIGHWAYS  
AND  
LOUISVILLE-JEFFERSON COUNTY METRO GOVERNMENT  
SUPPLEMENTAL AGREEMENT NO. 1**

**WHEREAS**, the Louisville-Jefferson County Metro Government (**Metro**) and the Department of Highways (**Department**) entered into an Agreement (PO2-625-1300004672) on September 3, 2013 wherein the **Department** was to reimburse **Metro** up to \$603,000 in reimbursable state funding (FD04) to conduct the design phase for US 31W Dixie Highway in Jefferson County, Item Number 5-478 (**Project**);

**WHEREAS**, **Metro** desires to complete the design phase of the **Project** and has requested an additional \$47,940 to complete the design phase;

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

**WHEREAS**, **Metro** shall refer to the applicable state requirements listed in the Project Development Guide for Local Public Agencies and the **Department's** Project Development Checklist and Certification.

**WHEREAS**, the **Department** agrees this is a worthwhile **Project** and is willing to authorize an additional \$47,940 (FD04) for the design phase of the **Project**. The **Department** agrees to reimburse **Metro** up to \$650,940 for the **Project**, and

**WHEREAS**, any cost in excess of the reimbursement funding (\$650,940) for this **Project** will be the responsibility of **Metro**.

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

1. The **Department** agrees to reimburse **Metro** up to an additional \$47,940 for design work completed by **Metro**, or consultants, contractors, or subcontractors hired by **Metro**, under the obligations of this Agreement for the **Project** to improve Dixie Highway (US 31W) between Crums Lane (KY 2049) and Rockford Lane (KY 2051).
2. The **Department** has authorized up to \$650,940 in state funding (FD04) for all eligible expenses to complete the design phase of this **Project**. **Metro** shall be responsible for all eligible costs above the \$650,940 as well as any costs deemed ineligible for reimbursement from this **Project**. Any additional funding obligated for the completion of this **Project** shall be evidence in writing by both parties by a Supplemental Agreement. The **Department's** maximum state funding commitment for 5-478, 5-478.01, and 5-478.7 (and any other projects directly associated with Metro's ongoing TIGER-funded Dixie Highway project) remains \$12,255,000.
3. This Agreement is contingent upon the continued availability of appropriated funding. If the funding appropriated for the **Project** becomes unavailable for any reason including: the Kentucky General Assembly's failure to appropriate the funding, by operation of law or as the result of a reduction in funding, further reimbursement of **Project** expenditures may be denied, the **Project** may be cancelled, the timeline extended or the scope amended by the **Department** either in whole or in part without penalty. Denial of further reimbursement, **Project** cancellation, extension or amendment because of an interruption in the appropriated funding is not a default or breach of this Agreement by the **Department** nor may such denial, cancellation, extension or amendment give rise to any claim against the **Department**.
4. The effective date of this Supplemental Agreement is the date of signature by the Secretary of the Transportation Cabinet. The Term of Eligible Reimbursement under this Agreement shall be three (3) years from the date of its execution unless extended or amended by written

Agreement in accordance with the provisions of KRS 45A. Any and all funding obligated for any phase of this **Project** shall be available to reimburse the **Metro** for eligible work activities completed and costs incurred prior to expiration.

5. **Metro** shall follow state specifications for each necessary phase of this **Project**. **Metro** shall adhere to all state regulations, including KRS 45A, KRS 176, KRS 177, and all terms of this Agreement for activities related to this **Project** as lead agency. **Metro** will obtain any required permits, licenses or easements required to initiate, perform, and complete work and provide documentation to the **Department's** District 5 Office in Louisville. In addition, **Metro** is responsible to meet all other requirements and adhere to all regulations necessary to qualify for the receipt of these state funds. Concurrence must be obtained by **Metro** through the **Department's** District 5 Chief District Engineer in Louisville prior to the awarding of any contract for work or materials to be used on this **Project**.
  
6. Should the **Project** require any design services, **Metro** agrees to use only licensed consultants who are pre-qualified to do work for the **Department** or to use a licensed Professional Engineer registered in the Commonwealth of Kentucky that demonstrates sufficient experience and knowledge in the type of work and receives the approval of the **Department's** District 5 Chief District Engineer in Louisville. **Metro** shall be responsible for all **Project** design activities, which may be completed either by **Metro's** staff or a consultant that is to be selected based on qualifications. All design work to be contracted must comply with all legal advertisement and selection requirements including, but not limited to, the Model Procurement Code provisions of KRS 45A and KRS 424. **Metro** shall submit and obtain concurrences to the **Department's** District 5 Chief District Engineer in Louisville final design plans, specifications, and a total estimate prior to any construction. When applicable, **Metro** must obtain any necessary permits or easements to allow for work to be accomplished on this **Project** and adhere to the Uniform Relocation Assistance (URA) and Real Property Acquisitions Policies Act.

7. **Metro** may submit to the **Department's** District 5 Office in Louisville current billings reflecting the actual cost of work incurred during any given work period, which will be paid within a reasonable time after receipt by the **Department**; however, in no event is **Metro** to submit billings for work performed for less than a thirty (30) day period. All charges to the **Project** shall be supported by properly executed invoices, contracts, or vouchers evidencing in proper detail the nature and propriety of the charge. The **Department** may require additional documentation at their discretion.
  
8. Discrimination (because of race, religion, color, national origin, sex, sexual orientation, gender identity, age, or disability) is prohibited. During the performance of this contract, **Metro** agrees as follows:
  - a. **Metro** will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, sexual orientation, gender identity, or age. **Metro** 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. **Metro** agrees to provide, upon request, needed reasonable accommodations. **Metro** 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. **Metro** agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
  - b. **Metro** will, in all solicitations or advertisements for employees placed by or on behalf of **Metro**; state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability.

- c. **Metro** 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 **Metro's** commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. **Metro** 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.
- d. **Metro** will comply with all provisions of Executive Order No. 11246 of September 24, 1965 as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.
- e. **Metro** 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.
- f. In the event of **Metro'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 **Metro** may be declared ineligible for further government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in or as otherwise provided by law.
- g. **Metro** 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. **Metro** 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.

9. This Agreement and the maintenance responsibilities herein shall survive in perpetuity the cancellation or termination of all or any portion of the **Project**, and shall survive the completion of and acceptance of the **Project**. To protect the public interest and maintain the original intent, **Metro** agrees to maintain in an acceptable condition all facilities improved by the **Project** to the condition existing at the time of the Final Acceptance Report in perpetuity. In the event that the **Project** improvements are not maintained as a public facility, **Metro** shall reimburse the **Department** for all costs incurred and for all funding expended pursuant to the **Project**, including any applicable interest.
10. **Metro** shall maintain for a period of three (3) years all records of materials, equipment, and labor costs involved in the performance of work of said **Project**. In order to obtain reimbursement from the **Department** for constructing said **Project**, **Metro** shall submit to the **Department's** District 5 Office in Louisville documented invoices of materials, equipment, and labor used on the **Project**, including certification that the work was accomplished on a publicly maintained facility.
11. No member, officer, or employee of the **Department** or **Metro** during his tenure or for one (1) year thereafter shall have any financial interest, direct or indirect, in this Agreement or the proceeds thereof as identified in KRS 45A.340. The **Department** and **Metro** shall comply with the requirements of the Executive Branch Code of Ethics KRS Chapter 11A. **Metro** warrants that no person, elected official, selling agency or other organization has been employed or retained to solicit or secure this Agreement upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee. No member, officer, or employee of the **Department** or **Metro** shall collude or lobby on behalf of this **Project** without penalty, including but not limited to suspension or debarment.
12. To the extent permitted by law, **Metro** shall indemnify and hold harmless the **Department** and all of its officers, agents, and employees from all suits, actions, or claims of any character arising from any injuries, payments or damages received or claimed by any person, persons,



or property resulting from implementation of any phase of the **Project** or occurring on or near the **Project** site.

13. Either party may cancel the contract at any time for cause or may cancel without cause on 30 days written notice.
  - a. The **Department** reserves the right to cancel all reimbursements under this Agreement at any time deemed to be in the best interest of the **Department** by giving thirty (30) days written notice of such cancellation to **Metro**. If reimbursement under this Agreement is canceled under this section by reason other than violation of this Agreement or any applicable law by **Metro**, its agents, employees and contractors, the **Department** shall reimburse **Metro** according to the terms hereof for all expenses incurred under this Agreement to the date of such cancellation of reimbursement.
  - b. **Metro** may seek to cancel its obligations under this Agreement at any time deemed to be in the best interest of **Metro** by giving thirty (30) days written notice of such request to the **Department**. If the **Department** agrees to allow **Metro** to cancel the Project or cancel its obligations under this Agreement, **Metro** shall reimburse the **Department** for all funding reimbursements made under this Agreement.
  - c. Any dispute concerning a question of fact in connection with the work not disposed of by Agreement between **Metro** and the **Department** shall be referred to the Secretary of the Transportation Cabinet of the Commonwealth of Kentucky, or his duly authorized representative, whose decision shall be final. Any proposed change or extension to this Agreement shall be at the mutual consent of **Metro** and the **Department** and be evidenced in writing.
  
14. The Kentucky General Assembly may allow for a reduction in a contract worker hours in conjunction with a budget balancing measure for some professional and non-professional service contracts. If under such authority the agency is required by Executive Order or otherwise to reduce contract hours, the contract will be reduced by the amount specified in that document

15. The **Department** certifies that it is in compliance with the provisions of KRS 45A.695. “Access to contractor's books, documents, papers, records, or other evidence directly pertinent to the contract.” **Metro** hereby acknowledges it is responsible to inform any entity it intends to hire or use as a contractor, as defined in KRS 45A.030(9), that the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, and the Legislative Research Commission, or their duly authorized representatives, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this contract for the purpose of financial audit or program review. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the contract and shall be exempt from disclosure as provided in KRS 61.878(1)(c). The contractor also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884.

16. KRS 45A.485 requires **Metro** to certify that all contractors shall reveal to the **Department**, any final determination of a violation by the contractor within the previous five (5) year period of the provisions of KRS chapters 136, 139, 141, 337, 338, 341, and 342. These statutes relate to the state sales and use tax, corporate and utility tax, income tax, wages and hours laws, occupational safety and health laws, unemployment insurance laws, and workers compensation insurance laws, respectively.

**Metro** shall certify that all contractors agree to be in continuous compliance with the provisions of those statutes which apply to the contractor's operations. Failure to reveal a final determination or failure to comply with the above statutes for the duration of the contract, shall be grounds for **Metro's** cancellation of the contract and the contractor's disqualification from eligibility for future state contracts for a period of two (2) years.

17. It is understood and agreed by these parties that if any part of this contract is held by the courts to be illegal or in conflict with any law of the Commonwealth of Kentucky, the validity of the remaining portions or provisions shall not be affected, and the rights and obligations of the

parties shall be construed and enforced as if the contract did not contain the particular part, term, or provision held to be invalid.

18. **Metro** will pass a resolution authorizing the Mayor to sign this Supplemental Agreement on behalf of **Metro**. An acceptable Resolution shall contain the project name, description, amount of funds being provided and an acknowledgement that **Metro** agrees to ratify and adopt all statements, representations, warranties, covenants, and agreements contained in the Agreement. Furthermore, by accepting the funds **Metro** agrees to all terms and conditions stated in the Agreement. A copy of that resolution shall be attached to and made a part of this Agreement.
19. All other terms and conditions of the September 3, 2013 agreement (PO2-625-1300004672) shall remain the same and are legally binding.

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

LOUISVILLE- JEFFERSON  
COUNTY METRO GOVERNMENT

COMMONWEALTH OF KENTUCKY  
TRANSPORTATION CABINET

\_\_\_\_\_  
Gregory Fischer  
Mayor

\_\_\_\_\_  
Greg Thomas  
Secretary

DATE: \_\_\_\_\_

DATE: \_\_\_\_\_

APPROVED AS TO FORM & LEGALITY

  
\_\_\_\_\_  
Todd Shipp  
Office of Legal Services

DATE: 6/13/17