

**PENDLETON COUNTY FISCAL COURT
SPECIAL CALLED MEETING
October Term, October 12TH, 2012**

COURT MET PURSANT TO ADJOURNMENT
With
HONORABLE HENRY BERTRAM, COUNTY JUDGE/EXECUTIVE
Presiding

MEMBERS PRESENT: Bobby Fogle, Gary Veirs, Judge Bertram

MEMBERS ABSENT: Alan Whaley, David Fields,

COUNTY ATTORNEY: Jeff Dean, Absent

In Re: Agenda

Squire Veirs made a motion to approve the agenda, second by Squire Fogle. Motion carried.

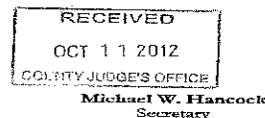
In Re: Kentucky Transportation Contract for Blacktop Funds

The Pendleton County Fiscal Court met on October 12, 2012 in a special called meeting to discuss the Kentucky Department of Transportation Contract that provides \$230,000.00 toward blacktopping certain county roads listed in the attached agreement. After discussion, the court agreed to approve the contract. Squire Fogle made a motion to approve the attached contract, second by Squire Veirs. Judge voted yea on the motion. Motion carried.

Steven L. Beshear
Governor



October 4, 2012



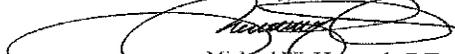
The Honorable Henry Bertram
Pendleton County Judge/Executive
233 Main Street
Falmouth, KY 41040

Dear Judge Bertram:

The Kentucky Transportation Cabinet has prepared the enclosed agreement whereby the Cabinet will provide up to \$230,000 in reimbursable state funds to Pendleton County. This funding will be used to resurface various roads in Pendleton County. Please see the agreement for more details. Pendleton County will be responsible for any ineligible costs and costs in excess of \$230,000 for this project.

We request that you sign both copies of this agreement and a resolution as requested in Section 25. Please return the signed copies of the agreement and the resolution to Selena Curry, 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 the County for your use and retention.

Sincerely,



Michael W. Hancock, P.E.
Secretary

MWH:isac

Enclosures (2)

cc: Steve Waddle, P.E., State Highway Engineer
Rob Hans, P.E., Chief District Engineer, D-6
Thomas Witt, P.E., Planning Supervisor, D-6
Daniel Menetrey, I.P.A. Coordinator, D-6



PENDLETON COUNTY
RESURFACING VARIOUS
COUNTY ROADS
\$200,000 - FD39 FUNDS
\$30,000 - CB06 FUNDS

AGREEMENT BETWEEN
COMMONWEALTH OF KENTUCKY
TRANSPORTATION CABINET
DEPARTMENT OF HIGHWAYS
AND
PENDLETON COUNTY

THIS AGREEMENT, entered into by and between the Commonwealth of Kentucky, Transportation Cabinet, Department of Highways, hereinafter referred to as the "**Department**," and Pendleton County, 233 Main Street, Palmouth, KY 41040, hereinafter referred to as the "**County**".

WITNESSETH:

WHEREAS, the parties hereto desire to resurface various county roads in Pendleton County, which shall hereinafter be referred to as the "**Project**";

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

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

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

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WHEREAS, the **Department** agrees this is a worthwhile **Project** and is willing to reimburse the **County** up to \$200,000 in state contingency funding (FD39) and \$30,000 in state rural secondary program funding (CB06) for the completion of this **Project**; and

WHEREAS, any cost in excess of the reimbursement funding (\$230,000) for this **Project** will be the responsibility of the **County**.

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

1. The **Department** agrees to reimburse the **County** up to \$230,000 for completion of work by the **County**, or consultants, contractors, or subcontractors hired by the **County**, under the obligations of this Agreement for the following **Project**:

To resurface the following various county roads:

- Fishing Creek Road (CR 1237) from 0.90 mile west of KY 330 extending westerly for approximately 2.10 miles.
- Lenoxburg Road (CR 1064) from 2.40 miles southwest of Buckeye Hills Road extending northeasterly for approximately 2.40 miles.
- Straub Lane (CR 1314) from KY 467 extending westerly to the end of county maintenance for approximately 0.75 mile.
- Bethel Bypass (CR 1345) from US 27 extending westerly to KY 17 for approximately 0.13 mile.
- Mathis Lane (CR 1323) from 0.304 mile southwest of KY 17 extending southwesterly to the end of county maintenance for approximately 0.83 mile.

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This **Project** is designed to enhance the reliability of the highway network and safety for motorists in the area providing safe connections. The **County** may choose to resurface any of the roads listed above at their own discretion, however, any ineligible costs, costs in excess of \$230,000 or any road not listed above is the responsibility of the **County**.

2. The **Department** has authorized up to \$200,000 in state contingency funding (FD39) and \$30,000 in state rural secondary program funding (CB06) for all eligible expenses for this **Project**. This funding shall be made available for reimbursement to the **County** for all eligible expenses to the **Project**. The **County** shall be responsible for all eligible costs above the \$230,000 as well as any costs deemed ineligible for reimbursement from this **Project**. Any additional funding obligated for the completion of this **Project** shall be evidenced in writing by both parties with a Supplemental Agreement.
3. This Agreement is contingent upon the continued availability of appropriated funding. If the funding appropriated for the **Project** becomes unavailable for any reason including: the Kentucky General Assembly's failure to appropriate the funding, by operation of law or as the result of a reduction in funding, further reimbursement of **Project** expenditures may be denied, the **Project** may be cancelled, the timeline extended or the scope amended by the **Department** either in whole or in part without penalty. Denial of further reimbursement, **Project** cancellation, extension or amendment because of an interruption in the appropriated funding is not a default or breach of this Agreement by the **Department** nor may such denial, cancellation, extension or amendment give rise to any claim against the **Department**.
4. The effective date of this Agreement is the date of signature by the Secretary of the **Department's** Transportation Cabinet. The Term of Eligible Reimbursement under this

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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 **County** for eligible work activities completed and costs incurred prior to expiration.

5. The **County** shall follow state specifications for each necessary phase of this **Project**. The **County** shall adhere to all state regulations, including KRS 45A, KRS 176, KRS 177, and all terms of this Agreement for activities related to this **Project** as lead agency. The **County** will obtain any required permits, licenses or easements required to initiate, perform, and complete work and provide documentation to the **Department's** District 6 Office in Covington. In addition, the **County** is responsible to meet all other requirements and adhere to all regulations necessary to qualify for the receipt of these state funds. Concurrence must be obtained by the **County** through the **Department's** District 6 Chief District Engineer in Covington prior to the awarding of any contract for work or materials to be used on this **Project**.
6. Should the **Project** require any design services, the **County** 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 6 Chief District Engineer in Covington. The **County** shall be responsible for all **Project** design activities, which may be completed either by the **County's** staff or a consultant that is to be selected based on qualifications. All design work to be contracted must comply with all legal advertisement and selection requirements including, but not limited to, the Model Procurement Code provisions of KRS 45A and KRS 424. The **County** shall submit and obtain concurrences to the **Department's** District 6 Chief District

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Engineer in Covington final design plans, specifications, and a total estimate prior to any construction. When applicable, the County must obtain any necessary permits or easements to allow for work to be accomplished on this Project and adhere to the Uniform Relocation Assistance (URA) and Real Property Acquisitions Policies Act.

7. Should the Project require the acquisition of any interest in real property by the County and the County does not have the authority to acquire property by eminent domain, the applicability of the Uniform Relocation Assistance (URA) and Real Property Acquisitions Policies Act shall 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 County will not be able to acquire the property, and (2) The property owner shall be informed in writing of what the County believes to be the fair market value of the property based upon a fair market value appraisal approved prior to any offer by the Department, Division of Right of Way and Utilities. The County shall ensure that all real property acquisition, relocation assistance, and property management are completed in a fair, equitable and approved manner consistent with all state laws and regulations governing the acquisition of real property for public use using highway funding. In all real property acquisitions, concurrence must be obtained through the Department's Division of Right of Way and Utilities and shall be subject to review and approval by the Department.
8. The County must obtain encroachment permits to allow for work to be accomplished on state owned right-of-way from the Department's District 6 Office in Covington. The County acknowledges that the Department will require the placement of a restrictive easement approved by and in favor of the Department in the chain of title of any real property acquired or improved pursuant to the Project. If the owner of any real property

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acquired or improved pursuant to the Project is not the Department or the County, the owner shall sign and be made a party to this Agreement and the owner hereby acknowledges, covenants and consents to the placement of a restrictive easement for perpetual maintenance of the property acquired or improved pursuant to the Project in the chain of title in favor of the Department prior to final reimbursement by the Department.

9. The County shall either adopt in writing the Department's written Policies and Procedures for Right of Way Acquisition and Relocation Assistance or present its own written Policies and Procedures for approval by the Department's Division of Right of Way and Utilities. The County shall conduct all appraisals and appraisal reviews using personnel meeting the Department's minimum qualifications and listed on the Department's pre-qualified appraiser and reviewer list. If the County chooses to use an acquisition consultant on all or any portion of the Project, the selection of the consultant shall be in accordance with the Department's Division of Right of Way Guidance Manual. All appraisals must be reviewed and approved by the Department's Central Office review appraisers, failure to do so will result in the Project being ineligible for funding reimbursement. The County shall provide property management in accordance with approved procedures and be responsible for the abatement of any asbestos containing materials and removal of contaminated soils pursuant to applicable state laws and regulations. The County shall provide the Department necessary assurance that all real property has been acquired and all displaced individuals, businesses, non-profit organizations and farms have been offered relocation assistance according to applicable state laws and regulations. The County shall provide the Department necessary documentation for review and approval at various stages of the acquisition process, as described in the Department's Right of Way Relocation Assistance Guidance Manual.

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10. When conducting a utility relocation, KRS 177.035 and KRS 179.265 determine the necessity of payment for utility companies. Identification of utility or railroad facilities in conflict with the **Project**, the execution of a remedy for said conflict and oversight of the execution, and all work related to the **Project** shall be done in accordance with the Cabinet's Standards, Specifications, Standard Drawings, and Utilities and Rails Manual. Utility relocations shall be designed by the utility company and shown on the **Project's** survey and general plan sheets. The impacted utility company, with its regular construction or maintenance personnel, and/or with an approved contractor or subcontractor, will furnish all engineering, administration, labor, and materials to make and complete all necessary adjustments of its facilities to accommodate the **Project**. Correspondence pertaining to utility or railroad coordination must be provided to both contracted parties. If a conflict of interest arises between the obligated party and a utility company, the unobligated party shall intercede to provide the utility coordination. The completed relocation shall be inspected to document the proper installation of the facilities. Upon full execution of the utility relocation for the **Project**, three (3) sets of as-built plans for each utility company that completes facility relocation on the project prior to the construction letting, a utility impact note defining the utilities identified in the **Project**, relocations that have been performed, incomplete relocations, and completion schedules for the incomplete work must be provided.
11. State construction criteria for the type of work shall be followed, including but not limited to the **Department's** Highway Design Manual, the **Department's** Standard Drawings, the **Department's** Standard Specifications for Road and Bridge Construction, the **Department's** Drainage Manual, the **Department's** Structural Design Manual, the American Association of State Highway Transportation Officials' (AASHTO) "Policy on Geometric Design of Highways and Streets", and the FHWA Manual on Uniform Traffic Control Devices (MUTCD). All work performed shall be in accordance with the **Department's** Standard

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

12. The **County** agrees to use only licensed contractors and subcontractors who are pre-qualified to do work for the **Department** for any necessary construction services. The **County** shall be responsible for all **Project** construction activities, which may be completed either by the **County's** staff or through the advertisement, opening of bids, selection, and contracting for contractor services in accordance with the Model Procurement Code provisions of KRS 45A and KRS 424. Specific requirements defined within KRS 45A require that the award be made to the lowest responsive bidder meeting the criteria of responsibility established by the **Department**. The contractor affirms that it is properly authorized under the laws of the Commonwealth of Kentucky to conduct business in this state and will remain in good standing to do business in the Commonwealth of Kentucky for the duration of any contract awarded. The contractor shall maintain certification of authority to conduct business in the Commonwealth of Kentucky during the term of this contract. Such registration is obtained from the Secretary of State, who will also provide the certification thereof. The **County** must receive **Department** approval for all change orders and shall have approval of the appropriate governing authority, but shall not increase the funding obligated to the **County** as a result of this Agreement.
13. The **County** shall be responsible for all aspects of administration, measuring, testing, and inspections to ensure the materials and work meets the **Department's** specifications of the construction contract. This includes providing daily, on-site inspection of the contractor's

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work activities and processing all of the paper work associated with the construction contract, including any change orders. The Department shall have access to the Project area and may conduct field reviews of the Project at any time. These field reviews are intended to verify status of the Project, performance of the contractor, adequacy of the County oversight, conformance with all laws, regulations, and policies and provide assistance to the County as may be necessary.

14. The County may submit to the Department's District 6 Office in Covington current billings reflecting the actual cost of work incurred during any given work period, which will be paid within a reasonable time after receipt by the Department; however, in no event is the County 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.
15. The County is responsible for ensuring that all Project construction activities have been completed and are responsible for providing all of the necessary paperwork as required by the construction contract. The County will conduct a field inspection to verify completion of the work in conformance with the Agreement. This documentation must be provided to the Department's District 6 Chief District Engineer in Covington prior to final payment of the Project. When both the County and the Department accept the field work as complete, the County's project manager shall certify the Project was constructed in accordance with the plans and specifications and that all funding authorized on this Project has been used to reimburse for materials, equipment, or labor as intended and at the location agreed herein by both parties. Upon receipt of the Department's Final Acceptance Report, the County will issue the final payment to the contractor with an official Release of Contractor form for

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signature. Within 30 days, the County shall provide the Department with a copy of the official Release of Contractor form, as well as proof of payment, which includes cancelled checks.

16. This Agreement and the maintenance responsibilities herein shall survive in perpetuity the cancellation or termination of all or any portion of the Project, and shall survive the completion of and acceptance of the Project. To protect the public interest and maintain the original intent, the County 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, the County shall reimburse the Department for all costs incurred and for all funding expended pursuant to the Project, including any applicable interest.
17. The County shall maintain for a period of three (3) years all records of materials, equipment, and labor costs involved in the performance of work of said Project. In order to obtain reimbursement from the Department for constructing said Project, the County shall submit to the Department's District 6 Office in Covington documented invoices of materials, equipment, and labor used on the Project, including certification that the work was accomplished on a publicly maintained facility.
18. No member, officer, or employee of the Department or the County during his tenure or for one (1) year thereafter shall have any financial interest, direct or indirect, in this Agreement or the proceeds thereof as identified in KRS 45A.340. The Department and the County shall comply with the requirements of the Executive Branch Code of Ethics KRS Chapter 11A. The County warrants that no person, elected official, selling agency or other organization has been employed or retained to solicit or secure this Agreement upon an

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agreement or understanding for a commission, percentage, brokerage, or contingent fee. No member, officer, or employee of the **Department** or **County** shall collude or lobby on behalf of this **Project** without penalty, including but not limited to suspension or debarment.

19. To the extent permitted by law, the **County** 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.
20. Either party may cancel the contract at any time for cause or may cancel without cause on 30 days written notice.
- a. The **Department** reserves the right to cancel all reimbursements under this Agreement at any time deemed to be in the best interest of the **Department** by giving thirty (30) days written notice of such cancellation to the **County**. If reimbursement under this Agreement is canceled under this section by reason other than violation of this Agreement or any applicable law by the **County**, its agents, employees and contractors, the **Department** shall reimburse the **County** according to the terms hereof for all expenses incurred under this Agreement to the date of such cancellation of reimbursement.
- b. The **County** may seek to cancel its obligations under this Agreement at any time deemed to be in the best interest of the **County** by giving thirty (30) days written notice of such request to the **Department**. If the **Department** agrees to allow the **County** to cancel the **Project** or cancel its obligations under this Agreement, the **County** shall reimburse the **Department** for all funding reimbursements made under this Agreement.

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- c. Any dispute concerning a question of fact in connection with the work not disposed of by Agreement between the **County** and the **Department** shall be referred to the Secretary of the Transportation Cabinet of the Commonwealth of Kentucky, or his duly authorized representative, whose decision shall be final. Any proposed change or extension to this Agreement shall be at the mutual consent of the **County** and the **Department** and be evidenced in writing.
21. 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
22. The **Department** certifies that it is in compliance with the provisions of KRS 45A.695. "Access to contractor's books, documents, papers, records, or other evidence directly pertinent to the contract." The **County** 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.

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

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

24. 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.

25. The County will pass a resolution authorizing the Judge/Executive to sign this Agreement on behalf of the County. A copy of that resolution shall be attached to and made a part of this Agreement.

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

PENDLETON COUNTY

COMMONWEALTH OF KENTUCKY
TRANSPORTATION CABINET

Henry Bertram
Judge/Executive

Michael W. Hancock
Secretary

DATE: _____

DATE: _____

APPROVED AS TO FORM & LEGALITY

Todd Shipp
Todd Shipp
Office of Legal Services

DATE: 9/23/12

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In Re: Adjournment

A motion was made by Squire Veirs, seconded by Squire Fogle carried, that this meeting be adjourned, to meet again in regular session on October 23, 2012 at 7:00 P.M., subject to any call meetings.

Attest:

Pendleton County Judge/Executive

Pendleton County Fiscal Court Clerk

