



## AGREEMENT

**THIS AGREEMENT**, made on the \_\_\_\_\_ day of \_\_\_\_\_, 2015, by and between **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government created pursuant to KRS Chapter 67A (hereinafter referred to as "LFUCG") and **Gresham, Smith and Partners** (hereinafter referred to as "CONSULTANT") located at 101 South Fifth Street, Suite 1400, Louisville, Kentucky 40202.

**WHEREAS**, LFUCG has been allocated federal funds from the Kentucky Transportation Cabinet under 23 U.S.C. §133(b) and Catalog of Federal Domestic Assistance number 20.205 for Intelligent Transportation System and Congestion Management System Traffic Improvements;

**WHEREAS**, LFUCG issued a request for proposals for a Traffic Video Distribution and Management System (RFP #28-2015); and

**WHEREAS**, CONSULTANT responded to RFP #28-2015 and LFUCG has determined that CONSULTANT is the successful bidder;

**NOW, THEREFORE**, LFUCG and CONSULTANT, in consideration of their mutual covenants herein **AGREE** with respect to the performance of a Traffic Video Distribution and Management System and payment for those services by LFUCG as set forth below.

**WITNESSETH:** That CONSULTANT and LFUCG, in consideration of the negotiated hours required to complete the above work (hereinafter referred to as "Work") by CONSULTANT, hereby agree to commence and complete the scope of services described as follows:

### **1.0 INCORPORATED DOCUMENTS**

Exhibit A – The "RFP" document titled "RFP #28-2015 Traffic Video Distribution and Management System," including the General Conditions and the Risk Management Provisions.

Exhibit B – The "Response" document titled "Gresham, Smith and Partners RFP 28-2015."

Exhibit C – The negotiated hours with rates required to complete the tasks defined in RFP #28-2015.

### **2.0 SCOPE OF WORK**

CONSULTANT shall perform the Work as outlined in the RFP and CONSULTANT'S Response. All of the terms and provisions of the RFP, including but not limited to the

General Conditions and the Risk Management Provisions and the Response are attached hereto and incorporated herein by reference as if fully stated. To the extent of any conflict between or among the documents, the terms of this Agreement shall take precedence, followed by the RFP and the Response. CONSULTANT will also provide monthly reports of all activities to LFUCG PROJECT MANAGER. Reports may be submitted electronically.

CONSULTANT shall perform the Work in accordance with applicable Federal and State laws and regulations, including Title 49 of the United States Code, Title 29 of the United States Code, and any and all applicable provisions of the Code of Federal Regulations.

### **3.0 PERIOD OF SERVICE**

The time period of service authorized by LFUCG for proper execution of the Work under the Contract, in full, is hereby fixed as one hundred eighty days (180) from the date specified in the Notice to Proceed.

### **4.0 INDEMNIFICATION CLAUSE**

The Risk Management Provisions of RFP #28-2015 are incorporated herein by reference as if fully stated. Copies of the required Certificates of Insurance shall be provided to LFUCG as required therein.

### **5.0 PAYMENTS TO CONSULTANT**

Payment for services under this Agreement shall be made on a time and expense basis subject to the following requirements:

- a. All invoices shall reflect the work performed in accordance RFP#28-2015 and the corresponding amount due based on the budget allotted for each task.

#### **5.1 Time of Payment**

CONSULTANT shall submit monthly statements for work completed. LFUCG shall respond to CONSULTANT's monthly statements within thirty (30) days, either denying the payment or by making the payment.

#### **Other Provisions Concerning Payments.**

**5.2.1** In the event the Agreement is terminated by LFUCG without fault on the part of the CONSULTANT, CONSULTANT shall be paid for the work performed or services rendered, based upon the amount of work completed or partially completed and delivered to LFUCG, for a sum not to exceed the total Agreement fee, as determined by mutual agreement between the LFUCG and CONSULTANT.

**5.2.2** In the event the services of CONSULTANT are terminated by LFUCG for fault on the part of CONSULTANT, CONSULTANT shall be paid reasonable value of the Work performed or services rendered and delivered, and the amount to be paid shall be determined by LFUCG.

**5.2.3** In the event the Agreement is terminated by CONSULTANT due to unreasonable delay caused by LFUCG, CONSULTANT shall be paid as set forth in Section 5.2.1 above.

**6.0 SUCCESSORS AND ASSIGNS**

**6.1** CONSULTANT binds itself and its partners, successors, executors, administrators, assigns, and legal representatives to this Agreement with respect to all covenants, agreements and obligations recited herein, including the RFP and Response. CONSULTANT shall not assign any interest, obligation or benefit in this Agreement or transfer any interest in the same, whether by assignment or novation, without prior written consent of LFUCG.

**6.2** CONSULTANT shall not subcontract more than fifty percent (50%) of the work, based upon dollar value, to be provided under this Agreement. CONSULTANT shall obtain written approval prior to subletting or assigning any services contained in this Agreement, and consent to sublet or assign any part of this Agreement shall not be construed to relieve CONSULTANT of any responsibility for compliance with the provisions of this Agreement.

**7.0 OPTIONAL TASKS AND SERVICES**

LFUCG may desire to have CONSULTANT perform work or render services in connection with this project other than provided by the express intent of this Agreement. Such work shall be considered "Optional Task and Services," subject to a change order, which shall be supplemental to this Agreement and shall set forth the character, scope, and compensation for the project. Work under such change order shall not proceed until written authorization is given by LFUCG. This work shall be considered "Optional Work & Tasks" and shall be paid on a lump sum basis by task in accordance with the negotiated rates, as provided by CONSULTANT in response to RFP#28-2015 in Attachment C.

**8.0 GENERAL CONSIDERATIONS**

**8.1 Termination**

The obligation to provide services under this Agreement may be terminated by either party upon seven (7) days' written notice in the event of substantial failure by the other party to perform in accordance with the terms hereof through no fault of the terminating party. LFUCG reserves the right to terminate the Agreement at any time upon seven (7) days' written notice to CONSULTANT.

**8.2 Ownership and Reuse of Documents**

All documents prepared by CONSULTANT pursuant to this Agreement shall be delivered to and become the property of LFUCG. LFUCG shall have the right to reuse same without restriction or limitation and without liability or legal exposure to CONSULTANT.

**8.3 Incorporation of Specific Bid Documents**

All bid documents related to RFP #28-2015, including the Advertisement for Bids, Information to Bidders, CONSULTANT's Response to LFUCG's Invitation to Bid, General and Special Conditions, Basis for Payment, Form of Proposal, Certificates of Insurance, Addenda and any other document(s) related to the bid be and hereby are incorporated herein as if fully set forth herein.

All bid documents related to RPF #28-2015 and CONSULTANT's compliance with federal, state, and local laws, including but not limited to Equal Employment Opportunity requirements, Title VII of the Civil Rights Act of 1964, as amended, Disadvantaged Business Enterprise Program requirements, and any other anti-discrimination obligations and minority contractor requirements related to the bid be and hereby are incorporated as if fully set forth herein.

**9.0 RIGHT TO REVIEW, AUDIT AND INSPECT**

CONSULTANT understands and agrees that, upon reasonable notice, officials of LFUCG, the Kentucky Transportation Cabinet, and the Federal Highway Administration may review, audit, and inspect any and all of the CONSULTANT'S records and operations relative to the services performed under this Agreement to assure compliance with the Agreement.

**10.0 DISPUTE RESOLUTION**

Disputes not settled between the parties shall be submitted to non-binding mediation by request filed in writing with the other party to this Agreement, and shall include a list of no less than three nor more than six names, addresses and qualifications of industry-experienced mediators which the filing party will accept to conduct the mediation. Mediation shall proceed in advance of legal or equitable proceedings. The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction thereof.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date and year above written.

LEXINGTON-FAYETTE URBAN COUNTY  
GOVERNMENT

ATTEST:

\_\_\_\_\_  
Clerk of the Urban County Council

BY: \_\_\_\_\_  
Jim Gray  
MAYOR

GRESHAM, SMITH AND PARTNERS  
101 South Fifth Street, Suite 1400  
Louisville, KY 40202

BY: \_\_\_\_\_  
ITS: \_\_\_\_\_  
*Principal*

\_\_\_\_\_  
(Secretary)  
*Christine H. Gray*  
\_\_\_\_\_  
(Witness)

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