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of original*

MEMORANDUM OF AGREEMENT

WHEREAS, the purpose of this Memorandum of Agreement ("MOA") is to set forth the duties and obligations of the Commonwealth of Kentucky, Justice and Public Safety Cabinet, Kentucky State Police ("KSP") and the Lexington-Fayette Urban County Government, Department of Public Safety, Division of Police ("Contractor") in the performance and administration of the Commonwealth's Motor Carrier Safety Assistance Program ("MCSAP"); and

WHEREAS, KSP serves as Kentucky's lead MCSAP agency, thereby receiving annual MCSAP funding from the United States Department of Transportation, Federal Motor Carrier Safety Administration ("FMCSA"); and

WHEREAS, Contractor possess the human resources to conduct MCSAP-related activities as specified in 49 CFR 350.309; and

WHEREAS, KSP is willing to provide a specified amount of FMCSA funds annually in exchange for activities by Contractor, which is eligible for reimbursement under the MCSAP; and

WHEREAS, it is in the best interest of both parties to conduct the aforementioned exchange;

NOW, THEREFORE, in consideration of the terms and conditions hereinafter set forth, the parties to this MOA hereby agree as follows:

1. This MOA is contingent upon the Contractor submitting to KSP a Commercial Vehicle Safety Plan ("CVSP") which contains elements put forth in 49 CFR 350.213 (c) through 49 CFR 350.213 (k).
2. KSP shall provide any training and/or program technical assistance appropriate for the successful operation of the Fayette County portion of the MCSAP.
3. Contractor shall conduct MCSAP activities in accordance with 49 CFR 350.309. These activities shall be consistent with those put forth in the CVSP.
4. Contractor agrees to program monitoring of its MCSAP activities, including administrative and fiscal functions, within 90 days of the final execution of this MOA.
5. KSP agrees to reimburse the Contractor for any MCSAP-eligible costs, as submitted in the budgetary portion of the CVSP, in an amount not to exceed \$70,000 (the actual award amount will be specified in the grant award letter from the program manager).
6. The parties agree that Contractor, in accordance with 49 CFR 350.303 shall make in-kind contributions, in an amount not to exceed fifteen percent of the total program costs, \$12,352.94, or as specified in the budget approval letter.
7. Contractor agrees to file claims for reimbursement within 30 days of the end of each quarter, and KSP agrees to reimburse on a quarterly basis, once an invoice with adequate supporting documentation of costs (e.g. payroll runs, invoices, proofs of payment, etc.) has been submitted.
8. Any MCSAP funds not used by the Contractor may not be carried forward; the funds will revert to KSP.
9. Contractor agrees to submit the final claim for the MOA period within 30 days of the ending date.
10. Any equipment purchased with MCSAP funds by the Contractor for the operation of MCSAP activities shall comply with 49 CFR 18.32.
11. Any equipment purchased with MCSAP funds by the Contractor for the operation MCSAP activities shall be listed in the Budget section of its CVSP. KSP agrees to review these Budget items for their necessity and reasonableness to the operation of MCSAP activities.
12. Should the Contractor cease participation in MCSAP activities, any equipment purchased with MCSAP funds in excess of \$5,000 shall be returned to KSP.
13. If the Contractor expends \$300,000 or more annually in federal Awards, the agency shall have a single or program-specific audit conducted for that year in accordance with the provisions of the Office of Management and Budget ("OMB") Circular A-133.
14. This MOA may be modified in writing upon agreement of the parties.
15. This MOA shall be in effect for FFY 2018 MCSAP BASIC funding and ending September 30, 2019. The approved budgets or modifications will amend this MOA.
16. The contractor, as defined in KRS 45A.030(9), 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 contract 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, and the Legislative Research Commission which are directly pertinent to the contract 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(l)(c) prior to the execution of the contract. 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.

17. This MOA shall be effective upon final execution by the parties.

JUSTICE AND PUBLIC SAFETY CABINET TERMS AND CONDITIONS

1. Contractor shall comply at all times with the federal and state constitutions; federal, state, and local law; federal and state executive orders; federal and state attorney general opinions; federal and state case law; Commonwealth of Kentucky Executive Department policy and procedures; Commonwealth Office of Technology policy and procedures; and Commonwealth policy and procedures.
2. The Contractor shall report any and all acts and omissions constituting a violation of applicable federal, state, or local law; applicable Commonwealth policies and procedures; or this MOA to the Commonwealth in writing within one business day of the discovery of the violation.
3. The Contractor shall provide the Commonwealth any and all policy and other directives governing the Contractor as applicable to this MOA.
4. The Contractor certifies that the Contractor is legally entitled to enter into this MOA with the Commonwealth, and by holding and performing this MOA, the Contractor will not be violating any conflict-of-interest statute (KRS 45A.330-45A.340, 45A.990, 164.390), nor KRS 11A.040 of the executive branch code of ethics relating to the employment of former public servants.
5. To the extent permitted by law, the Contractor agrees to indemnify and hold harmless the Commonwealth against any and all claims, losses, demands, obligations, and litigation, including attorneys' fees, that result from or by: (1) goods tendered and services rendered by the Contractor in connection with performance of this MOA, (2) any and all bad-faith, erroneous, negligent, reckless, and unlawful acts and omissions of the Contractor, its officers, or employees in the performance of this MOA, (3) the Contractor's creation of a hazardous condition or exacerbation of a pre-existing hazardous condition; (4) the publication, translation, reproduction, delivery, performance, use, or disposition of any data processed under the contract in a manner not authorized by the contract, or by federal or Commonwealth regulations or statutes by the Contractor, (5) the policies and procedures specifically involving all the Contractor employment practices used by the Contractor during the term of this MOA, and (6) any failure of the Contractor, its officers, or employees to observe federal, state, and local laws, including but not limited to labor laws and minimum wage laws.
6. The parties agree that as to any and all legal matters each party shall represent only itself, even if the parties appear to have a common interest. The parties may coordinate their efforts in any and all legal matters upon determination of the Commonwealth's General Counsel that doing so would be beneficial to the Commonwealth.
7. The Contractor acknowledges and agrees that the Contractor acts as an agent of the Commonwealth in fulfillment of any and all terms and conditions within this MOA and any and all lawful associated acts and omissions by the Contractor necessary to fulfill the terms and conditions within this MOA. Under no circumstance does the Commonwealth approve, authorize, or ratify any and all acts or omissions of the Contractor in violation of federal and state constitutions; federal, state, and local law; federal and state executive orders; federal and state attorney general opinions; federal and state case law; Commonwealth of Kentucky Executive Department policy and procedures; Commonwealth Office of Technology policy and procedures; Commonwealth policy and procedures; or this MOA.
8. The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, sexual orientation, gender identity, gender presentation, age, or genetic information. 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 Contractor agrees to provide, upon request, needed reasonable accommodations. The Contractor

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, gender presentation, age, genetic information, 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 Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

- 8.1. In all solicitations or advertisements for employees placed by or on behalf of the Contractor, the Contractor will state that all qualified applicants will receive consideration for employment without regard to their race, religion, color, national origin, sex, sexual orientation, gender identity, gender presentation, age, genetic information, or disability.
 - 8.2. In the event of the Contractor'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; the Contractor may be declared ineligible for further contracts; and such other sanctions that may be imposed and remedies invoked as provided in or as otherwise provided by law.
9. The Contractor agrees and acknowledges that any and all property, whether intellectual or tangible and whether chattel or real, purchased by the Contractor, the Contractor's subcontractors, or the Contractor's agents in fulfillment of the terms and conditions of this MOA shall become the exclusive and sole property of the Commonwealth upon purchase by the Contractor and be owned by the Commonwealth at any and all times and in any and all locations. The Contractor shall report any and all purchases to the Commonwealth in writing as directed by the Commonwealth. The Commonwealth may approve or deny in writing any and all written requests by the Contractor to the Commonwealth to transfer ownership of any and all Contractor purchased and Commonwealth owned property. Electronic mail shall constitute a writing, written approval, written denial, and a written request. The Contractor shall notify the Commonwealth in writing prior to providing any and all property, whether intellectual or tangible and whether chattel or real, that the Contractor, the Contractor's subcontractors, or the Contractor's agents has determined to be proprietary in nature and that the Contractor may use as a basis to assert a claim of ownership to Commonwealth property. Electronic mail shall constitute a writing.
 10. The parties agree that they receive all information communicated between them before the execution of this MOA in strict confidence and that the receiving party, its agents, or employees shall not, without prior written consent of the other party, disclose any such information, subject to Commonwealth of Kentucky and federal disclosure laws.
 11. The Contractor shall not represent that a working copy, draft, or the finalized version of this MOA is identical to a previous iteration of this MOA if the Contractor has made edits since the last iteration. The Contractor shall clearly present all edits either through editing functions in word processing software or as a list provided contemporaneously with the most recently edited iteration.
 12. The Contractor shall not in any and all manners in any and all mediums to any and all individuals or entities state or imply that the Contractor is endorsed or preferred by the Commonwealth.
 13. The Contractor shall perform only the work duties explicitly authorized in this MOA. Any invoice Contractor submits that seeks payment for work other than the work explicitly authorized in this MOA will be rejected in whole or part at the discretion of the Commonwealth. The Commonwealth reserves the right to withhold payment in part or in whole for invoicing submitted by the Contractor that is not in accordance with the terms or conditions set forth in this MOA.
 14. The Contractor shall ensure that any and all deliverables meet requirements and standards previously established by the parties in writing prior to billing and acceptance of reimbursement.
 15. If the Commonwealth determines that deliverables due under this MOA are not in conformance with the terms and conditions of this MOA, the Commonwealth may request that the Contractor deliver assurances in the form of additional Contractor resources and demonstrate that other major schedules will not be affected. The Commonwealth shall determine the quantity and quality of such additional resources and failure to comply may constitute default by the Contractor.
 16. The Contractor agrees that noncompliance with the terms and conditions within this MOA may result in delayed reimbursements, partial reimbursements, or no reimbursement if the Commonwealth is unable to substantiate the goods and services tendered and rendered by the Contractor through the required

documentation. Implicit in the submission of each invoice is a certification that the Contractor has included all supporting documentation for each charge; failure to include all supporting documentation constitutes cause to withhold payment.


17. For all invoices submitted more than 30 calendar days after the end of the final billing period of the applicable fiscal year, the Contractor may be required to pursue payment under KRS 45.231, which shall be the sole responsibility of the Contractor.
18. The Contractor shall implement internal controls to ensure accurate billing and invoicing. In the event that the billing and invoicing error rate exceeds 10% of the total amount billed during a billing cycle, the Commonwealth may withhold the actual amount of the cost to meet its due diligence requirement regarding the mitigation of fraud, waste, and abuse through correct reimbursement of the Contractor.
19. The Contractor shall reimburse the Commonwealth for any grants or other funding lost as a direct result of Contractor's failure to comply with the requirements set forth by the terms of any grant of which the Commonwealth is the grantee that requires, explicitly or implicitly, the Contractor to adhere to the terms and conditions, including but not limited to the special conditions, of the grant.
20. The Contractor agrees that the Commonwealth, and its duly authorized agents and designees, shall have access to any books, documents, papers, records, or other evidence, which are directly pertinent to this MOA for the purpose of a financial audit or program review, including confidential and proprietary information. The Contractor also recognizes that any and all books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, except to the extent that books, documents, papers, records, or other evidence is subject to KRS 61.878(1)(c)(1).
21. In the event that the Commonwealth experiences a change in its budget status, Contractor agrees to renegotiate this MOA in good faith upon request of the Commonwealth.
22. In the event the Contractor becomes the subject debtor in a case pending under the Federal Bankruptcy Code, the Commonwealth's right to terminate this MOA may be subject to the rights of a trustee in bankruptcy to assume or assign this MOA. The trustee shall not have the right to assume or assign this MOA unless the trustee (a) promptly cures all defaults under this MOA; (b) promptly compensates the Commonwealth for the monetary damages incurred as a result of such default; and (c) provides adequate assurance of future performance, as determined by the Commonwealth.
23. The Contractor represents and warrants, and the Commonwealth relies upon such representation and warranty, that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with its provision of goods or its performance of services. The Contractor further represents and warrants that in the performance of this MOA, no person, including any subcontractor, having any such interest shall be employed.
24. The Contractor shall not knowingly allow any official or employee of the Commonwealth who exercises any function or responsibility in the review or approval of the undertaking or carrying out of this MOA to voluntarily acquire any ownership interest, direct or indirect, in the contract prior to the completion of this MOA.
25. During the term of this MOA, Contractor shall be authorized in its sole discretion to discipline, terminate or take any other personnel action against Contractor personnel. Upon communication by Commonwealth of an issue with Contractor personnel, Contractor shall have the sole authority to take action to effect a solution.
26. At no point shall any Contractor personnel be considered an employee of the Justice and Public Safety Cabinet, for any purpose, including but not limited to unemployment, taxes, withholding, health insurance, liability, retirement, workers' compensation, vacation, sick or other leave, the Family Medical Leave Act, accrued benefits, evaluations, or any other purpose. At all times, any such individual shall be considered and deemed to be an employee of the Contractor.
27. Nothing in this MOA shall be construed, in any way, as granting to any individual providing services under this MOA any of the claims, privileges, or rights established or recognized under KRS Chapter 16, KRS Chapter 18A or KAR Title 101.
28. In no event shall any person or entity be deemed to be a third-party beneficiary of this MOA.
29. Pursuant to the Executive Branch Code of Ethics, Kentucky Revised Statutes Chapter 11A, and in order to avoid conflicts of interest more generally, dual-status personnel may not manage or administer this MOA or any of its individual terms and conditions. Dual-status personnel is defined as any and all individuals who are employed by or receive a tangible benefit from the Commonwealth and the Contractor simultaneously.

30. Dual-status personnel shall be considered Commonwealth personnel and shall not be considered Contractor personnel for the purposes of this MOA, except for the terms and conditions of this MOA that apply to dual-status personnel by virtue of their dual status.
31. The Contractor acknowledges that the Commonwealth may execute agreements with other vendors for additional or related goods and services that address, interact with, or otherwise regard this MOA. The Contractor shall fully cooperate with such other vendors and vendor personnel, agents, and designees. The Contractor shall not commit any act; allow any omission; or permit its personnel, agents, or designees to commit any act or allow any omission that will interfere with the performance of work by any other vendor or any other vendor's personnel, agents, or designees.
32. The Contractor shall comply, at a minimum, with the Records Retention Schedule promulgated by the State Archives and Records Commission applicable to the agency to which it is providing goods, services, revenue, or any and all combinations thereof pursuant to this MOA.
33. Each party shall provide a contact to resolve any and all issues related to this MOA and promptly update the contact information as necessary.
34. All notices under this MOA shall be given in writing. Electronic mail constitutes a writing.
35. No change, waiver, or discharge of any liability or obligation under this MOA on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.
36. No party shall assign its respective rights or obligations under this MOA without prior written consent of the other party. Any purported assignment or delegation in violation of this MOA is void.
37. The terms and conditions of this MOA may only be amended by mutual written consent of both parties.
38. The Contractor shall agree and acknowledge that any and all violations of this MOA may result in the immediate termination of this MOA, as well as the imposition of civil and criminal sanctions as applicable.
39. The Commonwealth shall have the right to terminate and cancel this MOA at any time not to exceed 30 days' written notice served on the Contractor by registered or certified mail.
40. This MOA shall be construed and enforced in accordance with the laws of the Commonwealth of Kentucky.
41. The parties agree that any claim, action, or lawsuit arising under this MOA must be brought in Franklin Circuit Court in the Commonwealth of Kentucky.
42. If any term or provision or any part of this MOA is declared invalid or unenforceable, the remainder of this MOA shall not be affected, and each term and provision of this MOA shall be valid and enforceable to the fullest extent permitted by the law.
43. This MOA is the final and exclusive agreement between the parties. All prior negotiations and agreements are superseded by this MOA.

APPROVALS

This MOA is subject to the terms and conditions stated herein. By affixing signatures below, the parties verify that they are authorized to enter into this MOA and that they accept and consent to be bound by the terms and conditions stated herein. In addition, the parties agree that (i) electronic approvals may serve as electronic signatures, and (ii) this MOA may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute a single agreement.

Commonwealth


Signature

Commissioner
Title

RICHARD W SANDERS
Printed Name

10/09/18
Date

Contractor



Signature

MAYOR
Title

JIM GRAY
Printed Name

09/07/18
Date

Approved as to form and legality


Attorney