

R 313-2013

**AGREEMENT BETWEEN
KENTUCKY TRANSPORTATION CABINET
AND
LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT
ITS/CMS TRAFFIC IMPROVEMENTS
\$460,000
PO2-625-1400003771**

This AGREEMENT is made and entered into, by and between the Commonwealth of Kentucky, Transportation Cabinet, hereinafter referred to as the CABINET, and the Lexington-Fayette Urban County Government, hereinafter referred to as the LFUCG.

WITNESSETH

WHEREAS, Section 133 of Title 23, United States Code, established a surface transportation program to authorize Federal funds to be appropriated for projects specified in Title 23, United States Code, Section 133 (b), and the applicable Catalog of Federal Domestic Assistance number is 20.205 – Highway Planning and Construction Program; and

WHEREAS, an allocation of these funds shall be made available by the CABINET to urbanized areas over 200,000 population; and

WHEREAS, the LFUCG has submitted a Scope of Work and Budget Summary for Intelligent Transportation System (ITS) and Congestion Management System (CMS) Traffic Improvements, hereinafter referred to as the PROJECT, for approval requesting Federal Surface Transportation Program Metropolitan Lexington (SLX) funds in the amount of \$460,000, and local funds in the amount of \$115,000 (20% local share) for a total contract cost of \$575,000 for the period not to begin before January 1, 2014 through June 30, 2015; and

WHEREAS, the CABINET is willing to provide these Federal funds to the LFUCG subject to annual Federal obligation limitations, the amount of which shall be 80% of the eligible costs associated with the PROJECT; and

WHEREAS, the LFUCG has agreed to provide Non-Federal funds to match the Federal-aid funds for the PROJECT, as more particularly set forth hereinafter; and

WHEREAS, the PROJECT is part of the approved Transportation Improvement Program for the Lexington Urbanized Area,

WHEREAS, the Federal-aid Highway Program is a State Administered Reimbursement Program and the LFUCG shall carry out this PROJECT in accordance with applicable Federal and State laws and regulations including all of Title 49 United States Code (USC), Title 23 United States Code (USC), 49 Code of Federal Regulations (CFR), and 23 Code of Federal Regulations (CFR),

WHEREAS, the LFUCG shall complete the work as described in the Scope of Work and Budget Summary (Attachment A) in accordance with the terms and conditions of this AGREEMENT, FHWA Form 1273, and the Project Development Checklist & Certification,

WHEREAS, the LFUCG shall refer to the Federal-Aid Project Development Guide for Local Public Agencies and any future revisions, the FHWA Contract Administration Manual, the CABINET/FHWA Stewardship Agreement, and all applicable State and Federal laws and regulations for assistance in complying with this AGREEMENT,

WHEREAS, all Federal-aid projects must also specifically comply with the National Environmental Policy Act (NEPA), Section 4(f) of 49 United States Code (USC) 303, Section 106 of the National Historic Preservation Act, Sections 401 and 404 of the Clean Water Act, the Endangered Species Act, and any other applicable environmental laws and regulations,

WHEREAS, all Federal-aid projects must also specifically comply with the Federal Funding Accountability and Transparency Act (Attachment B), Title VI of the Civil Rights Act of 1964, the Americans with Disabilities Act of 1990 (ADA),

WHEREAS, the requirements of the Disadvantaged Business Enterprise (DBE) program, as described in 23 CFR 635 Subpart A and Section 1101(b) of MAP-21 (the Moving Ahead for Progress in the 21st Century Act), the requirements of the Uniform Relocation Assistance and Real Property Acquisition Policies Act (Uniform Act), and the Federal Buy America construction contracts requirements, as spelled out in 23 CFR 635 Subpart D, apply to all Federal and Federal-aid transportation programs,

WHEREAS, the LFUCG must comply with Federal guidelines listed in 23 CFR 635 for procurement services, and KRS 177, KRS 179, and KRS 45A, the Kentucky Model Procurement Code (MPC), as it relates to State agencies,

WHEREAS, Federal-aid projects are to serve a public purpose in perpetuity, the LFUCG is responsible for maintaining any real property or facilities improved pursuant to the PROJECT in perpetuity on a non-profit basis,

WHEREAS, the LFUCG shall demonstrate and shall maintain adequate staff, provide delivery systems, and sufficient accounting control to complete the PROJECT in accordance with all Federal and State laws and regulations addressed herein, and

WHEREAS, the LFUCG shall accept responsibility for all administration, staffing, reporting, monitoring, maintenance and operation costs for the PROJECT as identified under this AGREEMENT.

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

Section 1. Scope of Work & Budget Summary. It is understood that the PROJECT will enhance the transportation system for the community as further described by the LFUCG in the Scope of Work and Budget Summary (Attachment A, attached hereto and made a part of this AGREEMENT). The FHWA through the CABINET agrees to reimburse the LFUCG up to \$575,000 for completion of work by the LFUCG, or consultants, contractors, or subcontractors hired by the LFUCG, under the obligations of this AGREEMENT for the following PROJECT:

The LFUCG shall identify and provide a point of contact, including adequate contact information, for who shall be in responsible charge to manage this PROJECT on the LFUCG's behalf, and be responsible for ensuring that the LFUCG adheres to all terms and conditions of this AGREEMENT. The LFUCG has agreed to execute the PROJECT. The CABINET/FHWA Project Development Checklist and Certification shall be submitted by the LFUCG and certified by the CABINET prior to construction, if applicable.

Section 2. Effective Date of Agreement and Term of Eligible Reimbursement. The effective date of this AGREEMENT is the date of signature by the Secretary of the CABINET. After execution of the AGREEMENT, the CABINET will return an original AGREEMENT to the LFUCG. Expenditures made prior to the effective date of the AGREEMENT and before the Notice To Proceed shall not be eligible for reimbursement. The Term of Eligible Reimbursement under this AGREEMENT shall end June 30, 2015, unless that Term is extended or amended by written agreement in accordance with the provisions of 23 CFR 635 and KRS 45A and with the mutual consent of the parties. Any and all funding obligated for any Phase of this PROJECT defined by the original Scope of Work and authorized changes shall be available to reimburse the LFUCG for eligible work activities completed and costs incurred after the effective date of this AGREEMENT and the Notice To Proceed, and prior to expiration of this AGREEMENT. After the end of the Term, no expenditures are eligible for reimbursement and the LFUCG shall be responsible for any unreimbursed expenses and any further expenses incurred to complete the PROJECT. After that

date, the LFUCG shall complete the PROJECT without further reimbursement from the CABINET or the LFUCG shall refund all prior reimbursements to the CABINET.

This AGREEMENT is contingent upon the continued availability of appropriated Federal 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 Federal funding, further reimbursement of PROJECT expenditures may be denied, the PROJECT may be cancelled, the timeline extended or the scope amended by the CABINET 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 CABINET nor may such denial, cancellation, extension or amendment give rise to any claim against the CABINET.

Section 3. Duration of Project. It is agreed by the parties hereto that the Scope of Work shall be completed within the period set forth herein under Section 2. In the event the LFUCG fails to complete the Scope of Work within the time allotted, or at any time the LFUCG fails to maintain adequate staff, project delivery systems, or sufficient accounting control, the CABINET reserves the right to cancel further reimbursements related to the PROJECT under this AGREEMENT. In the event the CABINET denies further reimbursement due to LFUCG's failures as noted above, the LFUCG shall refund all reimbursements made by the CABINET to the LFUCG under this AGREEMENT.

Section 4. Project Funding. It is expressly understood that federal funding for this PROJECT is being provided by the FHWA through the CABINET, specifically through the Catalog of Federal Domestic Assistance program number 20.205, Highway Planning and Construction. Following prioritization and programming in the Lexington Metropolitan Planning Organization's (MPO's) Transportation Improvement Program (TIP), the CABINET has obligated up to \$465,000 in Federal Surface Transportation Program Metropolitan Lexington (SLX) funding for this PROJECT.

The federal share of the total cost of this AGREEMENT shall not exceed \$465,000 in SLX funding unless otherwise approved in writing by the CABINET with the concurrence of FHWA. Reimbursement requests will be considered only for and up to the funding amount and type of work described in the approved Scope of Work and Budget and authorized by the Notice to Proceed. The LFUCG has agreed to accept up to \$460,000 in Federal reimbursement funding

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available as authorized for eligible PROJECT costs and shall be responsible for any costs in excess of \$460,000 that are necessary for completion of the approved Scope of Work and any authorized changes to the PROJECT. The 20% matching local share of \$115,000 shall be the responsibility of the LFUCG. The LFUCG agrees to provide local matching funds in the amount sufficient, together with the allocated Federal funds, to assure completion of the PROJECT.

The Lexington MPO has further agreed to make available up to \$5,000 of the total obligated PROJECT funding (\$465,000) to the CABINET for direct costs related to PROJECT oversight and management activities. The \$5,000 in SLX funds provided for state personnel charges will be matched with toll credits, and will not be made a part of this AGREEMENT. If any funding made available to the CABINET is not used, the remaining funding will be released back to the SLX balance for further prioritization by the Lexington MPO.

The LFUCG shall pay all PROJECT expenses and only upon meeting all terms and conditions of this AGREEMENT will be eligible to receive Federal reimbursement funding. The Federal share of costs is payable quarterly by the CABINET upon presentation and approval of an invoice and two (2) copies of adequate documentation. All charges to the PROJECT shall be supported by properly executed invoices, contracts, vouchers, or monthly employment data evidencing in proper detail the nature and propriety of the charge. The CABINET or FHWA may require additional documentation at their discretion.

It is understood that the value and character of any "in-kind" services contributed toward the local match must be approved by the CABINET and FHWA prior to being credited to the PROJECT. All "in-kind" services must meet CABINET and FHWA eligibility and applicability requirements.

It is further understood that revisions in the PROJECT Budget may be necessary and may be allowed if they do not exceed the total sum set out above, subject to the prior written approval of the CABINET. In order for the LFUCG to be reimbursed for costs that are not listed in the PROJECT Budget, the LFUCG must obtain written approval from the CABINET prior to incurring these costs.

Regardless of whether the contract time is extended, unexpended funds at the end of the PROJECT shall not be carried forward to a future AGREEMENT.

Section 5. Allowable Costs. Funding may be used for restoration, repair, construction and other activities eligible under the Surface Transportation Program (STP) as defined within 23

USC 133(b). The PROJECT costs referred to in this AGREEMENT shall be those costs that adhere to the Scope of Work and Budget Summary, as listed in Attachment A. The LFUCG shall follow 2 CFR 225-OMB Circular A-87 "Cost Principles for State, Local and Indian Tribal Governments" or 2 CFR 230-OMB Circular A-122 "Cost Principles for Non-Profit Organizations" or 2 CFR 220-OMB Circular A-21 "Cost Principles for Educational Institutions."

Reimbursement by the CABINET shall not be provided to the LFUCG if any requirements are not met. In order to obtain reimbursement for said PROJECT, the LFUCG shall submit properly supported documents with all reimbursement requests for any materials, equipment, and labor used on the PROJECT to the CABINET's District 7 Office in Lexington, Kentucky. The LFUCG may submit to the CABINET's District 7 Office in Lexington 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 CABINET; however, in no event is the LFUCG to submit billings for work performed for less than a thirty (30) day period. The CABINET shall reimburse the LFUCG upon request by the LFUCG providing proof of payment through appropriate documentation, which includes but is not limited to the following: work progress completed to date, expenses, cancelled checks, bank statements, employment reports and any other documentation deemed necessary by the CABINET's District 7 Office in Lexington.

The LFUCG shall also submit with the request for reimbursement a formal letter that certifies that the work shown on the invoice has been performed in accordance with the terms of this AGREEMENT, that the charge was accomplished on a publicly maintained facility, that the material, equipment, or labor cost(s) shown are verified and are true and correct, and that the request for reimbursement in no way represents any degree of duplication of payments that have or will be received from other funding sources. This formal letter must be signed by the designated project manager for the LFUCG in responsible charge.

Section 6. Reporting and Monitoring. This Federal-aid project is subject to the reporting requirements contained in the Federal Funding Accountability and Transparency Act (Transparency Act) of 2006 and its associated amendments. The Transparency Act requires entities receiving Federal awards such as Federal contracts, sub-contracts, grants and sub-grants, to disclose certain information. This Agreement is subject to 31 USC 6101, 2 CFR 170, and 2 CFR Subtitle A, Chapter I and Part 25.

The LFUCG shall maintain and comply with all reporting requirements outlined by the CABINET and FHWA, including the submittal of progress reports detailing the status of the PROJECT. The LFUCG shall provide invoices for expenses that match the approved Scope of Work and Budget Summary submitted to the CABINET. The making, recording and reporting of any purchases shall be undertaken in accordance with the requirements of KRS 45A. All checks, invoices, contract records, vouchers, orders, and purchasing documents pertaining in whole or in part to the PROJECT shall be clearly identified and readily accessible. The LFUCG shall permit the CABINET and/or FHWA to conduct periodic site visits to ascertain compliance with federal and state laws and regulations. The LFUCG shall maintain financial records for three years after project completion, Final Acceptance and final reimbursement in accordance with 49 CFR Part 18.42.

Section 7. Environmental Requirements. The CABINET has reviewed the Scope of Work and the Division of Environmental Analysis has issued a Categorical Exclusion for Minor Projects (CEMP) for the following PROJECT description: Upgrade and enhancement of hardware, software, training and development to improve traffic flow and reduce congestion. The effective date of the CEMP was May 9, 2012.

Section 8. Permits and Licenses. The LFUCG is responsible for obtaining all permits and licenses required to initiate, perform and complete all phases of the PROJECT in an appropriate and timely manner. Concurrence must be obtained by the LFUCG through the CABINET's District 7 Chief District Engineer in Lexington prior to the awarding of any contract for work or materials to be used on this PROJECT. Per the CABINET/FHWA Stewardship Agreement, the PROJECT may require more involvement from the FHWA.

Section 9. Design and Construction Standards. All Federal and State design and construction criteria for the type of work shall be followed, including but not limited to 23 CFR 625, the CABINET's Highway Design Manual, the CABINET's Standard Drawings, the CABINET's Standard Specifications for Road and Bridge Construction, the CABINET's Drainage Manual, the CABINET'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 CABINET's Standard Specifications for Road and Bridge Construction, 2012 edition, and as provided in Subsection 105.01 of said Specifications. All materials furnished shall be in

accordance with Subsection 106 of said Specifications, including the CABINET's List of Approved Materials. These standards, specifications, and criteria are incorporated in this AGREEMENT by this reference.

Section 10. Engineering Services. The LFUCG shall be responsible for all PROJECT design activities, including to fully develop the PROJECT as defined within the body of this AGREEMENT, resulting in the preparation of all plans, specifications, notes, and a final estimate for concurrence by the CABINET, as applicable. The LFUCG has agreed to make available up to \$5,000 of the total PROJECT funding to the CABINET for direct costs related to PROJECT oversight and management activities.

Section 11. Contractor Procurement. The LFUCG shall be responsible for all PROJECT construction activities as defined within the body of this AGREEMENT, which may be completed either by the LFUCG's staff or by a contractor. If the LFUCG intends to use contractor services, the LFUCG shall act in accordance with the Federal contract provisions listed in FHWA Form 1273 which take precedence over the Kentucky Model Procurement Code provisions KRS 45A.343 and KRS 45A.345-460, as well as KRS 424, 23 CFR 635, 23 USC 112. Contractors and subcontractors must be pre-qualified by the CABINET for the type of work prior to be awarded a contract. If no CABINET prequalification category exists, a contractor or subcontractor must receive the approval of the CABINET prior to working on the PROJECT. 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.

If applicable, the LFUCG shall prepare an independent engineer's estimate in accordance with 23 CFR 630, Subpart B to compare against the contractors' bids for reasonableness. The LFUCG shall thoroughly review all bids and obtain concurrence from the CABINET prior to the award or the rejection of any contract of bids for work or materials to be used on this PROJECT. Factors that should be considered in reviewing submitted bids are: a comparison of the bids against the engineer's estimate, the number of bids submitted, the distribution or range of bids received, the geographic location of bidders, any potential savings from readvertising the

PROJECT, a comparison of bids against other recent bids for the same item or service, the urgency of the PROJECT, the number of times previously advertised or contracted for, the current market conditions, a comparison of unit bids versus engineer's estimate unit bids, the funding available. Determining whether the bids received are adequate involves considering any critical safety improvements, emergency repair or replacement of damaged facilities, the opening of otherwise completed facilities to traffic, furthering a phased construction schedule, or any other factors deemed important by the CABINET or FHWA. Specific Federal requirements defined within 23 CFR 635 require that the award be made to the lowest responsive bidder meeting the criteria of responsibility established by the CABINET.

Section 12. Contract Administration and Inspection. The LFUCG shall be responsible for all aspects of administration, measuring, testing, and inspections to ensure the materials and construction work meets CABINET specifications and federal quality assurance specifications referenced in 23 CFR 637 and 23 CFR 635.105 (a) or (b). This includes providing daily, on-site inspection of the contractor's and subcontractor's work activities and processing all of the paper work associated with the construction contract, including any change orders. The LFUCG must receive prior written CABINET approval for all change orders, but such approval shall not increase the funding obligated to the LFUCG under this AGREEMENT or otherwise.

The LFUCG shall use the CABINET's current Regional Highway and Bridge Construction Inspection advertisement for construction inspectors, or must receive CABINET approval to submit an Alternative Construction Inspection Plan. If the LFUCG does not have adequate staff to perform this work, the LFUCG may hire a consultant or enter into an agreement with another governmental agency to provide these services. The CABINET must review and approve the Construction Engineering and Inspection agreement and the agreement with the service provider must be submitted to FHWA for concurrence. If the LFUCG elects to hire a consultant, the LFUCG must ensure that the consultant staff is competent in construction inspection and performs all work under the direct supervision of a registered professional engineer or architect licensed in the Commonwealth of Kentucky. The use of a consultant does not relieve the LFUCG of ultimate responsibility for the proper administration and inspection of the construction. If a consultant is used to provide inspection services, the LFUCG must also provide an appropriately certified and licensed LFUCG employee to be in responsible charge of the PROJECT oversee the inspections.

When an Alternative Construction Inspection Plan is submitted, the LFUCG must ensure sufficient quantity and quality are delivered and that proper inspection documentation is maintained. The Alternative Construction Inspection Plan must be performed under the supervision of a Professional Engineer licensed in the state of Kentucky, include credentials and experience of inspectors, indicate testing consistent with the CABINET's Sampling Manual, detail the frequency, who will be responsible, what will be included in reports, and coordinate with the CABINET's construction inspector.

The CABINET and/or the FHWA shall have access to the PROJECT area and may conduct an announced or unannounced field review of the PROJECT at any time. This field review is intended to verify status of the PROJECT, performance of the contractor, adequacy of the LFUCG oversight, conformance with all laws, regulations, and policies applicable to the Federal-aid Highway Program, and provide assistance to the LFUCG where necessary.

Section 13. Davis-Bacon and Related Acts. The 1931 Davis-Bacon Act (prevailing Federal wage) requires the recipients of all Federal-aid construction projects to comply with contractor and subcontractor payment rates and fringe benefits as determined by the Secretary of Labor for corresponding classes of laborers and mechanics engaged in similar construction activities. Specific wage rates shall be included in the construction contract between the LFUCG and the contractor, which must also include a contract provision that overrides the general applicability provisions in Form FHWA-1273, Sections IV and V.

Section 14. The Contract Work Hours and Safety Standards Act. During the construction of the PROJECT, the LFUCG 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 LFUCG shall refer to the Contract Work Hours and Safety Standards Act for the requirements under this provision.

Section 15. The Copeland "Anti-Kickback" Act. The LFUCG 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 LFUCG shall refer to the Copeland Act for the requirements under this provision.

Section 16. Title VI - Civil Rights Act of 1964. The LFUCG shall comply with all requirements imposed by Title VI of the Civil Rights Act of 1964 (78 Stat. 252), and any applicable DOT Regulations (CFR Title 49, Subtitle A, Part 21). Title VI prohibits discrimination on the basis of race, color, national origin, disability, gender, and age in all programs or activities of any recipient of Federal assistance.

Section 17. Equal Employment Opportunity. In connection with the execution of this AGREEMENT, the LFUCG shall take affirmative action and not discriminate against any employee or applicant for employment to ensure that applicants are employed, and that employees are fairly 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 LFUCG shall incorporate the foregoing requirements of this paragraph in all subcontracts for services covered by this AGREEMENT.

Section 18. Disadvantaged Business Enterprise (DBE) Requirements. An applicant DBE firm must be given consideration for participation in the PROJECT and a DBE goal may be set by the LFUCG for work on this PROJECT. If a goal is established, the CABINET shall review and approve the DBE goal based on CABINET processes and procedures. Should a DBE goal be established, any participating DBE firm must be certified as a DBE firm and be prequalified with the CABINET. The LFUCG agrees to comply with the DBE Requirements contained within 23 CFR 635 Subpart A, Section 1101(b) of Public Law 109-59, Chapter 3 of Title 49 USC and 49 CFR Part 26 to ensure equal opportunity to socially and economically disadvantaged small businesses.

Assurance. The contractor, subrecipient, or subcontractor 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 contracts assisted by the United States Department of Transportation. 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 allowable remedy the CABINET

deems appropriate. Each contract signed with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include this provision.

DBE Prompt Payment Requirement. The LFUCG must abide by 49 CFR Part 26.29 with regard to prompt payment mechanisms and retainage payment. No recipient or contractor may withhold retainage on any subcontract on this PROJECT.

Section 19. Prohibited Interest. No member, officer, or employee of the CABINET or the LFUCG 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 CABINET and the LFUCG shall comply with the requirements of the Executive Branch Code of Ethics KRS Chapter 11A. No member, officer, or employee of the CABINET or LFUCG shall collude or lobby on behalf of this PROJECT without penalty, including but not limited to suspension or debarment.

Section 20. Covenant Against Contingent Fees. The LFUCG 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. 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 21. Interest of Members of or Delegates to Congress. No funding has 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 22. Maintenance as Public Facilities. As applicable, the LFUCG agrees to maintain the facilities, to include the installation of electronics, signals, etc., 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 LFUCG shall reimburse the CABINET for all proceeds provided for in this PROJECT including any applicable interest, unless such change in use is approved in writing by the CABINET and FHWA, if applicable. The LFUCG shall obtain concurrence from the CABINET's District 7 Chief

District Engineer in Lexington of a Maintenance Plan for any facilities to be constructed, prior to the awarding of any contract to construct such facilities.

Section 23. Americans with Disabilities Act. The LFUCG 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. ADA prohibits discrimination against otherwise qualified individuals under any program or activity receiving Federal financial assistance covered by this AGREEMENT and imposes requirements that affect the design, construction, and maintenance of all transportation projects, to provide access to all facilities.

Section 24. Applicable Laws. This AGREEMENT shall be in accordance with all federal laws, and the laws of the Commonwealth of Kentucky.

Section 25. Hold Harmless Clause. To the extent permitted by law, the LFUCG shall indemnify and hold harmless the FHWA and the CABINET 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 any PROJECT site.

Section 26. Contract Completion. The LFUCG is responsible for ensuring that all PROJECT activities have been completed and is responsible for providing all of the necessary paperwork as required by the contract. This involves conducting a pre-audit of all contract items and associated paperwork. If construction is a part of this PROJECT, the additional requirements of this section apply.

When complete, the LFUCG's project engineer in responsible charge of the PROJECT shall notify the CABINET the PROJECT is ready for final inspection. The LFUCG will conduct a field inspection to verify completion of the work in substantial conformance with the AGREEMENT. When both the LFUCG and the CABINET accept the field work as complete, the LFUCG'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. The CABINET's Chief District Engineer in Lexington will complete a Final Acceptance Report.

Within thirty (30) days upon receipt of the CABINET's Final Acceptance Report, the LFUCG will issue the final payment to the contractor and proof of payment to the CABINET with

an official Release of Contractor form for signature. Upon receipt of the contractor's agreement to the Release of Contractor paperwork, the LFUCG will transmit the Final Estimate and Release to the CABINET. The CABINET will then submit a Final Voucher request to the FHWA Financial Management Team with copies of the CABINET's Final Acceptance Report and signed Final Release of Contractor. Approval of the Final Voucher will constitute Final Acceptance by the FHWA. In accordance with 49 CFR 18.42, the LFUCG shall maintain all records of materials, equipment, and labor costs for this PROJECT for three (3) years after final payment and the CABINET will retain records for three (3) years on site and an additional five (5) years in Archives.

Section 27. Audit and Inspection. The LFUCG, contractor and any subcontractors shall permit the CABINET, the Comptroller General of the United States and the Secretary of the United States Department of Transportation, or their authorized representatives, to inspect and approve all phases of the PROJECT and all relevant PROJECT data and records, including any audit(s) of the LFUCG pertaining to the PROJECT.

The U.S. Comptroller General and any representatives shall have authority to examine any records of the contractor, any subcontractors, the CABINET, or the LFUCG administering this PROJECT that directly pertain to, and involve transactions relating to, the contract or subcontract; and shall have authority to interview any officer or employee of the contractor, any subcontractors, the CABINET, or the LFUCG administering this PROJECT, regarding such transactions. The CABINET and any representatives shall have authority to examine any records or interview any employee or officers working on this PROJECT. The contractor is advised that representatives of the CABINET have the authority to examine any record and interview any employee or officer of the contractor, any subcontractor, or other firms working on this PROJECT.

The LFUCG hereby acknowledges its duty to the CABINET to determine whether it is subject to the Single Audit Act of 1984, P.L. 98-502, and the Single Audit Act Amendments of 1996, P.L. 104-156. If the LFUCG has expended more than \$500,000 in federal funding from all sources in the LFUCG's fiscal year, the LFUCG shall provide the CABINET copies of their OMB Circular A-133 "Audits of States, Local Governments and Non-Profit Organizations" audit reports within 9 months of their fiscal year end. The LFUCG shall provide the CABINET with copies of any audits or reviews prepared as a result of that Act.

The LFUCG 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 of the contractor's 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 of the contractor's 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)(c) 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 28. Campaign Finance. The LFUCG shall certify that 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 29. Violations. Pursuant to KRS 45A.485, the LFUCG shall certify that all contractors 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 LFUCG shall certify that all contractors agree 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 referenced statutes or to comply with these statutes for the duration of this AGREEMENT shall be grounds for the

cancellation of the contract or subcontract and disqualification of the contractor from eligibility for future state contracts for a period of two (2) years.

Section 30. 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 31. Disputes. Any dispute concerning a question of fact in connection with the work, not disposed of by agreement between the LFUCG 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. Regulations concerning any claims to be filed by a contractor are referenced in 23 CFR 635.124.

Section 32. Agreement Change. Any proposed change to the Scope of Work or time extension to this AGREEMENT shall comply with 23 CFR 635.120 and 635.121 and shall be evidenced in writing at the mutual consent of the LFUCG and the CABINET.

Section 33. Termination. The CABINET reserves the right to cancel all reimbursements under this AGREEMENT at any time deemed to be in the best interest of the CABINET by giving thirty (30) days written notice of such cancellation to the LFUCG. If reimbursement under this AGREEMENT is canceled under this section by reason other than violation of this AGREEMENT or any applicable law by the LFUCG, its agents, employees and contractors, the CABINET shall reimburse the LFUCG according to the terms hereof for all expenses incurred under this AGREEMENT to the date of such cancellation of reimbursement. The LFUCG may seek to cancel its obligations under this AGREEMENT at any time deemed to be in the best interest of the LFUCG by giving thirty (30) days written notice of such request to the CABINET. If the CABINET agrees to allow the LFUCG to cancel the PROJECT or cancel its obligations under this AGREEMENT, the LFUCG shall reimburse the CABINET for all federal funding reimbursements made under this AGREEMENT.

Section 34. Resolution. The LFUCG shall pass a resolution authorizing the Mayor to sign this AGREEMENT on behalf of the LFUCG. An acceptable Resolution shall contain the project name, description, amount of funds being provided and an acknowledgement that the LFUCG

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agrees to ratify and adopt all statements, representations, warranties, covenants, and agreements contained in the AGREEMENT. Furthermore, by accepting the funds the LFUCG agrees to all terms and conditions stated in the AGREEMENT. A sample resolution is provided in Attachment C for the LFUCG's reference in creating an acceptable resolution. A copy of the resolution shall be attached to the AGREEMENT and returned to the CABINET prior to full execution of this PROJECT.

IN TESTIMONY WHEREOF, the parties have hereto caused this AGREEMENT to be executed upon signature by their proper officers and representatives.

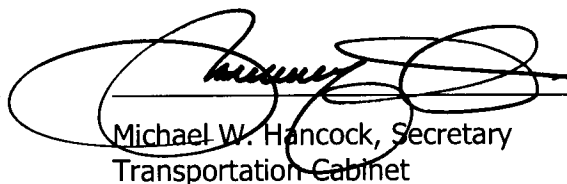
KENTUCKY TRANSPORTATION CABINET:

Approved as to form and legality:

Commonwealth of Kentucky



Attorney
Transportation Cabinet



Michael W. Hancock, Secretary
Transportation Cabinet

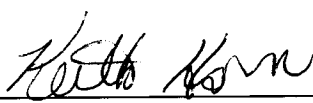
Date: 1/23/14

Date: 2/20/14

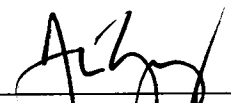
LOCAL PUBLIC AGENCY:

Approved as to form and legality:

Lexington-Fayette Urban County Government



Attorney
Lexington-Fayette Urban County Government



Mayor Jim Gray
Lexington-Fayette Urban County Government

Date: 02/03/14

Date: 2/7/14

ATTACHMENT A – SCOPE OF WORK AND BUDGET SUMMARY

ITS / CMS TRAFFIC IMPROVEMENTS (FY 2014)

Total Project Budget = \$580,000

This funding will complement and enhance ongoing traffic management efforts for Fiscal Year 2014 Congestion Mitigation/Air Quality (CMAQ) projects in the Intelligent Transportation System Plan and Congestion Management Study recommendations. The Lexington – Fayette Urban County Government Division of Traffic Engineering continuously upgrades and enhances hardware, software, training and development to improve traffic flow and reduce congestion during weekdays, evenings, weekends, special events and incidents. The division staff is continually addressing congested traffic conditions through travel time studies, monitoring and evaluating timing plan changes, making changes in signal phasing, and equipment installation, operation and maintenance. The various travel time studies and monitoring and evaluation of timing plan changes require on-site investigation to address dynamic conditions within the community. Changes in signal phasing along Lexington’s roadways often requires engineers and/or traffic signal technicians to meet with District and Central Office personnel, or others, to explain/discuss various strategies for the phase and equipment changes. Staff often must use their personal vehicles for this work. The equipment upgrades or adjustments sometimes require additional labor/overtime by signal technicians. To lessen the impact of this work on lane blockages and improve motorist and technician safety, it is often performed on weekends or evenings during low volume times.

Among the necessary traffic signal system upgrades is the installation of advanced 2070 traffic signal controllers, countdown pedestrian signals, flashing yellow arrows, fiber optic cable for communications and data transfer, adaptive traffic signal control, radar units for reducing dilemma zones and other technologies to continually improve the capabilities of the traffic signal system and to enhance the safety for all system users. The controllers offer engineers more flexible signal timing and phasing options to better address congested traffic flow while improving traffic management, safety and efficiency. The controller is more durable in the field lessening maintenance and electrical storm damage. In addition, the division proposes to continue the upgrade of pedestrian signals throughout the city to the countdown pedestrian signal. This signal enhances pedestrian safety as it provides the time remaining for them to safely cross a street. Included in these efforts is the further implementation of the flashing yellow arrow, audible traffic signals, IP addressable cameras, and illuminated street name signage where appropriate.

The Lexington Traffic Management Center (TMC) responsibilities increase as congestion occurs throughout the community. Further enhancements are planned to the traffic signal system and TMC to make the system more responsive, safe and efficient for motorists, bicyclists and pedestrians. The TMC desires to provide real-time and accurate traffic information in various formats to better inform and educate transportation system users during weekday peak travel periods, special events, holidays and incidents. Additional traffic monitoring camera video will be provided to cover more of the community to assist incident management efforts and reduce congestion along arterial roadways. Staffing skills will be enhanced through traffic and transportation related technical seminars, training, certification, travel and development.

Traffic signal system data collection, communication and vehicle detection will be enhanced at a number of locations throughout the community. Traffic signal system communication is crucial to the safe and efficient operation of the signal system and will be improved through the use of digital telephone and fiber optic cable. Vehicle detection will be improved through the use of video, radar, bluetoad (detect vehicle speeds), and in-pavement applications at various signal locations and provide up-to-date, reliable data. Some work may be performed by contractors as part of any projects/equipment efforts.

In an effort to provide positive guidance and safety benefit, roadway system reliability, enhance delineation and retro-reflectivity, diamond grade vehicular traffic warning signs will be provided and installed, where conditions warrant, on both collector and arterial routes in the community.

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Project Budget Detail:

Project Budget Summary:

SLX Funding Request:	\$460,000
SLX Funding Request:	+ <u>\$5,000</u> (State Forces)
Total SLX Request:	\$465,000
20% Local Match:	+ <u>\$115,000</u> (20% of \$460,000)
Total Project Budget:	\$580,000

Mileage:	\$3,500
Training:	\$5,000
LFUCG Staffing (incl. O.T.):	\$45,000
Projects/Equipment	\$506,500
Operating Supplies (signs)	\$15,000
State Forces	<u>\$5,000</u>
Total Project Budget:	\$580,000

It is anticipated that activities included in this proposal will be completed by June 30, 2015.

ATTACHMENT B--FEDERAL FUNDING ACCOUNTABILITY TRANSPARENCY ACT

Federal Funding Accountability and Transparency Act
*** AGREEMENT CAN NOT BE EXECUTED UNLESS ALL YELLOW BOXES ARE COMPLETED ***

1. SUB-AWARDEE
 Name: Lexington-Fayette Urban County Government
 Address: 200 East Main Street
 Lexington, KY 40507

2. DUNS NUMBER	Unique 9 digit number issued by Dun & Bradstreet. To obtain a DUNS number (if you agency does not already have one) please access: http://fedgov.dnb.com/webform
020428777	

3. CCR REGISTRATION (CAGE code)	Unique 5 digit number issued by the Central Contractor Registration. To obtain a CCR number (if your agency does not already have one) please access: https://www.bpn.gov/ccr/default.aspx
3WTE6	

4. TOTAL COMPENSATION AND NAMES OF TOP 5 EXECUTIVES	All agencies are required to report the Top 5 Highly Compensated officers for their agency if they meet BOTH of the following criteria: A) More than 80% of annual gross revenues are from the Federal government, and those revenues are greater than \$25,000,000 annually; and B) Compensation information is not already available through reporting to the U.S. Securities and Exchange Commission (SEC)	
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NO- Does not meet both criteria A & B	NO	If no, please skip to box 5
YES- Meets both criteria A & B		If yes, please fill out 1-5 with Executive name and compensation.

4.1	Executive Name	Compensation
4.2	Executive Name	Compensation
4.3	Executive Name	Compensation
4.4	Executive Name	Compensation
4.5	Executive Name	Compensation

5. PREPARED BY:	DATE:
Name: Irene Gooding	1/31/2014
Title: Director/Division of Grants and Special Programs	

Additional information about the Federal Funding Accountability Transparency Act (FFATA) can be found at:
<http://edocket.access.gpo.gov/2010/pdf/2010-22705.pdf>
<http://edocket.access.gpo.gov/2010/pdf/2010-22706.pdf>

RESOLUTION NO. 313-2013

A RESOLUTION AUTHORIZING AND DIRECTING THE MAYOR, ON BEHALF OF THE URBAN COUNTY GOVERNMENT, TO ACCEPT A GRANT FROM THE KENTUCKY TRANSPORTATION CABINET, WHICH GRANT FUNDS ARE IN THE AMOUNT OF \$460,000.00 FEDERAL FUNDS, ARE FOR THE FY 2014 ITS/CMS (INTELLIGENT TRANSPORTATION SYSTEM/CONGESTION MANAGEMENT SYSTEM) TRAFFIC IMPROVEMENTS PROJECT, THE ACCEPTANCE OF WHICH OBLIGATES THE URBAN COUNTY GOVERNMENT FOR THE EXPENDITURE OF \$115,000.00 AS A LOCAL MATCH, AND AUTHORIZING THE MAYOR TO TRANSFER UNENCUMBERED FUNDS WITHIN THE GRANT BUDGET.

BE IT RESOLVED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 - That the Mayor, on behalf of the Lexington-Fayette Urban County Government, be and hereby is authorized and directed to accept a grant from the Kentucky Transportation Cabinet, which Grant funds are in the amount of \$460,000.00 Federal funds, are for the FY 2014 ITS/CMS (Intelligent Transportation System/Congestion Management System) Traffic Improvements Project, and the acceptance of which obligates the Lexington-Fayette Urban County Government for the expenditure of \$115,000.00 as a local match.

Section 2 - That subject to the provisions of Ordinance No. 22-79, the Mayor is hereby authorized, in his discretion as Chief Executive Officer of the Urban County Government, to transfer the unencumbered balance of any operating or capital account appropriation to another operating or capital account appropriation within the Grant budget previously established for this Grant.

Section 3 - That this Resolution shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL: June 20, 2013

MAYOR



ATTEST:


CLERK OF URBAN COUNTY COUNCIL