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of original*

**NON-METROPOLITAN AREA**  
**PUBLIC TRANSPORTATION GRANT AGREEMENT**  
**BETWEEN**  
**THE KENTUCKY TRANSPORTATION CABINET**  
**AND**  
**LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT (LFUCG)**  
**DUNS # 020428777**

This **AGREEMENT** is made and entered into this the 11<sup>th</sup> day of September, 2018, between the Commonwealth of Kentucky, Transportation Cabinet, party of the first part, hereinafter referred to as the **CABINET** and the **Lexington Fayette Urban County Government (LFUCG)** party of the second part, hereinafter referred to as the **RECIPIENT**.

**WITNESSETH:**

**WHEREAS**, Sections 5303 (Metropolitan Planning Program, CFDA #20.505) and Section 5304 (State Planning and Research Program, CFDA #20.505), of the Title 49, United States, Chapter 53, Fixing America's Surface Transportation Act (FAST Act): Federal Transit Administration provides funds to assist in providing public transportation; and,

**WHEREAS**, the **RECIPIENT** has executed and filed with the **CABINET** an Application(s) incorporated by reference and also considered as Attachment A, requesting Federal financial participation in a program of public transportation (hereinafter referred to as the **PROJECT**), **CABINET** financial participation, and Local financial participation in accordance with Attachment(s) B-5303, B-5304; and,

**WHEREAS**, the **CABINET** and the Federal Transit Administration (hereinafter referred to as **FTA**), have determined that the **PROJECT** is in accordance with the purpose of the Formula Grant Program(s); and,

**WHEREAS**, the **RECIPIENT** desires, in accordance with its approved unified planning work program (UPWP) and budget(s) to permit the **PROJECT** to include the planning and administration services; and,

**WHEREAS**, the **RECIPIENT** desires in accordance with said UPWP and/or application to provide a program of public transportation to include transportation administration and planning or to provide coordination of public transportation activities, technical assistance, training, and planning support for nonurbanized areas within the Ohio-Kentucky-Indiana Regional Council of Governments (OKI) area.

**WHEREAS**, the **RECIPIENT** will agree to abide by guidance Circulars 8100.1C and 5010.1E,

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

**Section 1**  
**Project Description**

It is understood by both contracting parties that the effective date and duration of each Program Budget is noted in each Specific Program Attachment B, and

The **RECIPIENT** shall undertake and complete the **PROJECT** as described in its Unified planning work program (UPWP) in accordance with the terms and conditions of this **AGREEMENT**, 49 U.S.C. and applicable FTA Circulars, 2 CFR Part 200-Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Attachment C); Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (Common Rule (Attachment D), 49 CFR Part 18), Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and other Non-Profit Organizations (Common Rule (Attachment D), 49 CFR Part 19), and any other regulation or directive issued by the **CABINET** or FTA. It is understood that this **PROJECT** is to provide public transportation services in accordance with the Unified planning work program (UPWP) and to provide coordinating and technical services in accordance with its application. Service adjustments may be necessary; however, no significant change in the basic service concept will be implemented without the mutual approval of both the **CABINET** and the **RECIPIENT**. Unless waived, the **RECIPIENT** shall comply with the requirements of Section 5333(b) of the Federal Transit Act, as stipulated by the U.S. Department of Labor conditions incorporated herein and made a part hereof as Attachment A, Special Section 5333(b) Warranty for Section 5303 or other applicable Labor conditions incorporated herein.

**Section 2**  
**Duration of Project**

The **RECIPIENT** shall carry on and complete the **PROJECT** in accordance with Attachment B (Budget and Period of Performance), and Attachment B (July 1, 2018 – June 30, 2019) (Metropolitan Planning Program & State Planning and Research Program) Budget and Period of Performance). Nothing in this **AGREEMENT** should be construed to prevent the duration of the project from being changed by mutual agreement of the **CABINET** and the **RECIPIENT**.

### **Section 3** **Project Funding**

It is expressly understood that funds for this **PROJECT** are being provided through an appropriation authorized under applicable Sections 5303 & 5304 of the Federal Transit Act. This is not a Research and Development Grant. The total federal award for KY-2017-002-02 was \$2,359,604. The total amount of federal funds obligated to Lexington Fayette Urban County Government (LFUCG) from KY-2017-002-02 in this agreement is \$48,400. It is the responsibility of the **CABINET** to obtain these funds from **FTA**. These funds may be authorized by either a single authorization or by a series of authorizations. The total cost of the **PROJECT** shall not exceed the amount indicated in the budget attached hereto as Attachment B, and made a part hereof unless approved in writing by the **CABINET**. The **RECIPIENT** agrees to provide local matching funds in the amount sufficient, together with the authorized funds, to assure funding for completion of the **PROJECT**. **PROJECT** costs are payable monthly by the **CABINET** upon presentation of invoices, which should include explanations and justifications for such funds requisitioned. Invoices shall comply with the expense categories in Attachment B. Ten (10) percent of the final invoice may be withheld pending completion and acceptance of an audit as required in Section 11.

It is understood that the value and character of all "in-kind" services must be approved by the **CABINET** prior to being credited to the **PROJECT**. All "in-kind" services must meet both **CABINET** and **FTA** eligibility and applicability requirements for Section 5303 & 5304 funding and the Common Rule (49 CFR Parts 18 and 19).

It is further understood that since this **PROJECT** is to provide public transportation services, budget adjustments may be necessary and may be allowed if they do not exceed the total sum set out above, subject to the approval of the **CABINET**. In order for the **RECIPIENT** to be reimbursed for costs, which are not listed in Attachment B, the **RECIPIENT** must obtain written approval from the **CABINET**.

### **Section 4** **Allowable Costs**

The **PROJECT** costs referred to in this **AGREEMENT** shall be comprised of the allowable costs incident to the performance of the **PROJECT** less applicable credit, to be determined in accordance with the standards set forth in 49 U.S.C. Section's 5303 & 5304 and applicable FTA circulars, 2 CFR Part 200-Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards or other appropriate federal management circular. **PROJECT** costs will be in accordance with the approved line item budget in Attachment B.

## **Statement of Financial Assistance**

This contract is subject to a financial assistance contract between the Kentucky Transportation Cabinet and the Federal Transit Administration.

### **Section 5** **Assignability**

The **RECIPIENT** shall not assign any portion of the work to be performed under this **AGREEMENT**, except as set forth in the Unified planning work program (UPWP) or application, or execute any contract or amendment thereto, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this **AGREEMENT** without the prior written concurrence of the **CABINET**.

### **Section 6** **Reporting and Records**

The **RECIPIENT** shall maintain and comply with all reporting requirements outlined by **FTA** and the **CABINET**. The **RECIPIENT** shall send to the **CABINET** a quarterly progress report, at a minimum.

The **RECIPIENT** shall establish and maintain, separate accounts for the **PROJECT**, either independently or within its existing accounting system, to be known as the **PROJECT** Account. All charges to the **PROJECT** Account shall be supported by properly executed invoices, contracts, or vouchers evidencing in proper detail the nature and propriety of the charges.

All checks, invoices, contracts, vouchers, orders or other accounting documents pertaining in whole or in part to the **PROJECT** shall be clearly identified, readily accessible, and to the extent feasible, kept separate and apart from all other such documents.

The **RECIPIENT** shall retain all records for a period of three (3) years from the date of final payment under this contract.

### **Section 7** **Audit and Inspection**

The **RECIPIENT** shall have an independent certified audit performed in accordance with OMB 2 CFR Part 200 Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards [This supersedes and streamlines Circulars A-21, A-87-A-110, and A122 (which have been placed in OMB guidance's); Circulars A-89, A-11-, A-102, and A-133. Audits of States, Local Governments and Nonprofit Organizations]. The **RECIPIENT** shall permit the **CABINET**, the Comptroller General of the United States and Secretary of the United States Department of Transportation, or their authorized representatives, to inspect all **EQUIPMENT** and **PROPERTY**

purchased by **RECIPIENT** as part of the **PROJECT**, all transportation services rendered by the **RECIPIENT** as part of the **PROJECT**, and all relevant **PROJECT** data and records. The **RECIPIENT** shall also permit the above named persons to review audits and working papers or audit the books, and accounts of the **RECIPIENT** pertaining to the **PROJECT**. **RECIPIENTS**, in accordance with OMB 2 CFR Part 200-Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards are required to submit audit reports within 30 days after receipt of the auditor's report(s) to the Federal Audit Clearing House (FAC). In addition, two (2) original audit reports for each Fiscal Year that federal funds are expended under this **AGREEMENT** are to be submitted to the **CABINET** Office of Transportation Delivery, and postmarked within 30 calendar days after receipt of the Auditor's report or nine (9) months after the end of the Fiscal Year, whichever comes first in accordance with 2 CFR Part 200-Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. If the due date falls on a Saturday, Sunday or Federal Legal Holiday, the audit is due the next business day. The **CABINET** Office of Transportation Delivery will utilize the issue date on the Independent Audit Report Letter as the receipt date unless the **RECIPIENT** provides evidence that the Audit Report was actually received (via hand delivery, Postal Mail or E-mail) on a different date. A **RECIPIENT's** board approval date of the audit or the Audit Report release date are not accepted dates of receipt. Any **RECIPIENT** expending less than \$750,000 in federal funds in a fiscal year, is not required to have a 2 CFR PART 200-Audit, but must submit an annual independent financial audit to the **CABINET** within 30 days after receipt of the auditor's report(s) or nine months after the end of the Fiscal Year, whichever comes first.

Subrecipients are to electronically submit the data collection form to the Federal Audit Clearinghouse (FAC) on time as required by 2 CFR Part 200-Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. This regulation requires that the data collection form must be submitted to FAC within the earlier of 30 calendar days after receipt of the auditor's report(s), or nine (9) months after the end of the fiscal year.

## **Section 8** **Insurance**

The **RECIPIENT** shall obtain insurance adequate to protect the **PROJECT PROPERTY** and **EQUIPMENT** as well as public liability insurance. The **RECIPIENT** shall certify to the **CABINET** the existence of such coverage before beginning vehicle operations, where applicable.

**Section 9**  
**Responsibility for Claims and Liabilities**

The **RECIPIENT** shall be responsible for and save harmless the **CABINET** for all damage to life and property due to the activities of **RECIPIENT**, its subcontractors, agents or employees, in connection with their services under this **AGREEMENT**.

**Section 10**  
**Compliance with Commonwealth of Kentucky Motor Vehicle Laws**

The **RECIPIENT** shall comply with all Motor Vehicle laws deemed appropriate to this **PROJECT** including Kentucky Revised Statute Chapter 281.

**Section 11**  
**Drug Free Workplace**

The **RECIPIENT** shall comply with the U.S. DOT regulations, Drug-Free Workplace Requirements (grants), 49 C.F.R. Part 29, Subpart F.

**Section 12**  
**Compliance with Civil Rights Act of 1964 and Title VI**

During the performance of this contract, the **RECIPIENT** for itself, its assignees and successors in interest agrees as follows:

1. **Compliance with Regulations:** The **RECIPIENT** will comply with the regulations of the **CABINET** relative to nondiscrimination in federally assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the **REGULATIONS**), which are herein incorporated by reference and made a part of this contract.
2. **Nondiscrimination:** The **RECIPIENT**, with regard to the work performed by it after award and prior to completion of the contract work, will not discriminate on the ground of race, religion, color, sex, national origin, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The contractor will not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the **REGULATIONS**, including employment practices when the contract covers a program set forth in Appendix B of the **REGULATIONS**.
3. **Solicitations for Subcontractors, Including Procurement of Materials and Equipment:** In all solicitations either by competitive bidding or negotiations made by the **RECIPIENT** for work to be performed under a subcontract including procurement of materials or equipment, each potential subcontractor or supplier shall be notified by the **RECIPIENT** of the **RECIPIENT'S** obligations under this

contract and the regulations relative to nondiscrimination on the ground of race, religion, color, sex, national origin, age, or disability.

4. Information and Reports: The **RECIPIENT** will provide all information and reports required by the **REGULATIONS**, or orders and instructions issued pursuant thereto, and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the Cabinet to be pertinent to ascertain compliance with such regulations, orders and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the **RECIPIENT** will so certify to the **CABINET** as appropriate, and shall set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of the **RECIPIENT'S** noncompliance with the nondiscrimination provisions of this contract, the **CABINET** will impose such contract sanctions as it may determine to be appropriate, including but not limited to:
  - a. Withholding payment to the **RECIPIENT** under the contract until the contractor complies; and/or
  - b. Cancellation, termination or suspension of the contract, in whole or in part.

Incorporation of Provisions: The **RECIPIENT** will include the provisions or Paragraphs 1 through 5 in every subcontract, including procurement of materials and leases of equipment unless exempt by the **REGULATIONS**, order or instructions issued pursuant thereto. The **RECIPIENT** will take such action with respect to any subcontract or procurement as the **CABINET** may direct as a means of enforcing such provisions including sanctions for noncompliance; provided however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the **CABINET** may request the State to enter into such litigation to protect the interests of the State.

Title VI of the Civil Rights Act of 1964 provides that "no person in the United States shall, on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. In pursuit of this objective, the **RECIPIENT** must not (1) provide any service, financial aid, or benefit that is different from that provided to others; (2) subject an individual to segregation or separate treatment; (3) Restrict an individual in the enjoyment of any advantage or privilege enjoyed by others; (4) Deny any individual service, financial aid, or benefit under the program; (5) Treat individuals differently in terms of whether they satisfy admission, eligibility, or membership; (6) Deny an individual the opportunity to participate in the provision of services; and (7)

Deny a person the opportunity to participate as a member of a planning or advisory body. Reference FTA Circular 4702.1A, "Title VI and Title VI-Dependent Guidelines for FTA Recipients."

The Title VI Notice of Protections Against Discrimination (Beneficiary Notice) should be adopted by the **RECIPIENT**. This notice should be posted on the **RECIPIENT** website, if applicable, and disseminated through such measures, including but not limited to, public hearings, posters, flyers, etc.

The **RECIPIENT** must abide by the Title VI Principles regarding Environmental Justice.

The **RECIPIENT** must have a plan to ensure access to programs and activities by persons with Limited English Proficiency (LEP).

### **Section 13**

#### **Compliance with Governor's Code of Fair Practice**

During the performance of this contract, the **RECIPIENT** agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, age, or disability. 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, age, or disability. Such action shall include but not be limited to the following: employment, upgrading, demotion or transfer; recruitment, or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notice to be provided setting forth the provisions of this nondiscrimination clause.
2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, sex, age, or disability.
3. The contractor will send to each labor union or representative of workers, with which he had a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representative of the contractor's commitments under this section and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.



**Section 14**  
**Equal Employment Opportunity**

In connection with the execution of this **AGREEMENT**, the **RECIPIENT** shall not discriminate against any employee or applicant for employment because of race, religion, color, sex, national origin, age, or disability. The **RECIPIENT** shall take affirmative action to insure that applicants are employed, and that employees are 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 **RECIPIENT** will incorporate the foregoing requirements of this paragraph in all subcontracts for services covered by this **AGREEMENT**. Reference FTA Circular 4704.1, "Equal Employment Opportunity Program Guidelines for Grant Recipients."

The **RECIPIENT** must submit for approval an EEO/Affirmative Action Plan if they meet the following threshold: 50 or more transit-related employees and received capital or operating assistance in excess of \$1million the past year or received planning assistance in excess of \$250,000.

**Section 15**  
**Interest of Members of or Delegates to Congress**

No member of or delegate to the Congress of the United States shall be admitted to any share or part of this **AGREEMENT** or to any benefit arising there from.

**Section 16**  
**Prohibited Interest**

No member, officer, or employee of the **CABINET** or of the **RECIPIENT** during his tenure or for one year thereafter shall have any interest, direct or indirect, in this **AGREEMENT** or the proceeds thereof.

**Section 17**  
**Covenant Against Contingent Fees**

The **RECIPIENT** warrants that no person, 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 warrant, the **CABINET** shall have the right to annul this **AGREEMENT** without liability or, in this discretion, to deduct from the compensation, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

**Section 18**  
**Applicable Laws**

This **AGREEMENT** shall be in accordance with the laws of the Commonwealth of Kentucky and the Federal Transit Administration.

**Section 19**  
**Discrimination of Persons with Disabilities**

The **RECIPIENT** agrees to comply with the provisions of Section 504 of the Rehabilitation Act of 1973, P.L. 93-112, and with the Americans with Disabilities Act of 1990 (ADA), and applicable Federal regulations relating hereto, issued by the U.S. Department of Transportation, prohibiting discrimination against otherwise qualified persons with disabilities under any program or activity receiving federal financial assistance covered by this **AGREEMENT**.

**Section 20**  
**Disadvantaged Business Enterprise Policy**

It is the policy of the U.S. Department of Transportation that disadvantaged business enterprises as defined in 49 CFR part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this **AGREEMENT**. Consequently the DBE requirements of 49 CFR part 26 apply to this **AGREEMENT**.

**DBE Obligation:** The **RECIPIENT** or its contractor agrees to ensure that disadvantaged business enterprises as defined in 49 CFR part 26 are given a level playing field in order to fairly participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this **AGREEMENT**. In this regard the **RECIPIENT** or contractors shall take all necessary and reasonable steps in accordance with 49 CFR part 26 to ensure that disadvantaged business enterprises have an opportunity to compete for and perform contracts. The **RECIPIENT** and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR part 26. The **RECIPIENT** shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The **RECIPIENT'S** DBE program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the **RECIPIENT** of its failure to carry out its approved program, the Department may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*).

The **RECIPIENT'S** DBE goal is shown on Attachment B. The **RECIPIENT** shall look for ways to achieve the goals of the DBE Program through more race-neutral means in order to create a level playing field and increase opportunities for all small businesses, including DBE firms.

The **RECIPIENT** will make every effort to locate DBE's to purchase materials and services for use in the **PROJECT**. To demonstrate reasonable efforts to meet the Disadvantaged Business Enterprise contract goal, the **RECIPIENT** will provide documentation of the steps it has taken to obtain Disadvantaged Business Enterprise participation, including, but not limited to the following:

1. Attendance at a pre-bid meeting, if any, scheduled by the **RECIPIENT** to inform DBE's of subcontracting opportunities under a given solicitation;
2. Advertisement in general circulation media, trade association publications, and disadvantaged-focus media before bids or proposals are due;
3. Written notification to Disadvantaged Business Enterprises that are available that their interest in the contract is solicited;
4. Efforts made to select portions of the work proposed to be performed by DBE's in order to increase the likelihood of achieving the stated goal;
5. Efforts to negotiate with Disadvantaged Business Enterprises for specific sub-bids including at a minimum:
  - a. The names, addresses, and telephone numbers of Disadvantaged Business Enterprises that were contacted.
  - b. A description of the information provided to Disadvantaged Business Enterprises regarding the plans and specifications for portions of work to be performed.
  - c. A statement of why agreement was not reached with Disadvantaged Business Enterprises.
6. Explanation when a **RECIPIENT** determines that a Disadvantaged Business Enterprise is not qualified.
7. Effort made to assist the Disadvantaged Business Enterprise contacted that needed assistance in obtaining bonding or insurance required by the Kentucky Transportation Cabinet.

The **CABINET** will make available names of DBE's, that they have certified, that have the capability to furnish these materials or services. The **RECIPIENT** is advised that should they find a DBE from which they can purchase these materials or services it will then ask that the **CABINET** certify this DBE.

The **RECIPIENT** must create and maintain a bidders list of prime contractors and subcontractors on DOT-assisted projects. The following information must be included:

Firm Name  
Firm Address  
Status as a DBE or non-DBE firm  
Age range of the firm (ranges determined by OTD)  
Range of the Annual Gross Receipts (ranges determined by OTD) over the past three (3) fiscal years  
Number of Employees  
Industry Title (based on NAICS)

If as a condition of assistance the **RECIPIENT** has submitted and the **CABINET** has approved a disadvantaged business enterprise affirmative action program which the **RECIPIENT** agrees to carry out, this program is incorporated into this financial assistance agreement by reference. This program shall be treated as a legal obligation and failure to carry out its terms shall be treated as a violation of this financial assistance agreement. Upon notification to the **RECIPIENT** of its failure to carry out the approved program the U.S. DOT shall impose such sanctions as noted in 49 CFR part 26, which sanctions may include termination of the **AGREEMENT** or other measures that may affect the ability of the **RECIPIENT** to obtain future U.S. DOT financial assistance.

The **RECIPIENT** should take all reasonable steps to eliminate obstacles for small business participation. To qualify as a small business, the standards of the Small Business Administration (SBA) must be met. Steps to help eliminate obstacles include, but are not limited to:

- Encourage bid packages to include portions of the contract that can be reasonably bid by small businesses
- Require a prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.
- Placing this statement in every bid package (any procurement \$20,000 and over): "In regard to the arrangement of the solicitation, times for the bid opening, delivery schedules, etc. these will be made in a manner to facilitate participation by Small Businesses Concerns. The definition, size standards, and average gross receipts of Small Businesses are found in 13 CFR Part 121."
- For non-traditional transit grants, Livability Bus Grants, and other transit grants/projects that reach out to other community or State entities, identify alternative acquisition strategies and structured procurements that will allow joint

ventures consisting of small businesses, including DBE firms, to be able to competitively compete for prime contracting opportunities.

All this should be accomplished in a race and gender neutral manner.

### **Section 21**

#### **US Department of Labor Federal Executive Order 11246**

Discrimination (because of race, religion, color, national origin, sex, sexual orientation, gender identity, age, or disability) is prohibited. This section applies only to contracts utilizing federal funds, in whole or in part. During the performance of this contract, the contractor agrees as follows:

1. The contractor will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, sexual orientation, gender identity, or age. 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, age or disability. Such action shall include, but not be limited to the following; employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensations; and selection for training, including apprenticeship. 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.
2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor; state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability.
3. The contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The contractor will take such action with respect to any subcontract or purchase order as the

administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

4. The contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965 as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.
5. The contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.
6. 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 and the contractor may be declared ineligible for further government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in or as otherwise provided by law.
7. The contractor will include the provisions of paragraphs (1) through (7) of section 202 of Executive Order 11246 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor, issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, the contractor may request the United States to enter into such litigation to protect the interests of the United States.

**Section 22**  
**Model Clauses**

Attachment C, Federally Required and Model Contract Clauses and Attachment D, current Federal Transit Administration Master Agreement (FTA MA), are herein made a part of this **AGREEMENT**. The **RECIPIENT** shall abide by the FTA Master Agreement.

The **RECIPIENT** shall include the Model Clauses in all subcontracts entered into pursuant to this **AGREEMENT**.

**Section 23**  
**Disputes**

Any dispute concerning a question of fact in connection with the work not disposed of by **AGREEMENT** between the **RECIPIENT** and the **CABINET** shall be referred to the Executive Director, Office of Transportation Delivery of the Transportation Cabinet of the Commonwealth of Kentucky, or his/her duly authorized representative.

**Section 24**  
**Termination**

The **CABINET** may cancel this **AGREEMENT** at any time by giving thirty (30) days written notice of such cancellation to the **RECIPIENT** for any of the following reasons:

1. The **RECIPIENT** discontinues the use of the **EQUIPMENT** or **PROPERTY** during the **PROJECT** period for the purpose of providing public transportation services;
2. The **RECIPIENT** fails to provide or support public transportation services during the **PROJECT** period;
3. The **RECIPIENT** takes any action pertaining to this **AGREEMENT** without the approval of the **CABINET** and which, under the terms of this **AGREEMENT**, would have required the concurrence of the **CABINET**;
4. The commencement, prosecution or timely completion of the **PROJECT** by the **RECIPIENT** is, for any reason, rendered improbable, impossible or illegal;
5. The **RECIPIENT** shall be in default under any provision of this **AGREEMENT**.

Upon cancellation of this **AGREEMENT** under the provision of this paragraph, the **RECIPIENT** agrees to dispose of the **PROJECT EQUIPMENT** in accordance with the provisions of Section 6 of this **AGREEMENT**.

The **RECIPIENT** reserves the right to cancel this **AGREEMENT** by giving thirty (30) days written notice of such cancellation to the **CABINET**. The parties hereto may terminate this **AGREEMENT** at any time upon mutual written agreement, in which case the **EQUIPMENT** or **PROPERTY** will be disposed of in accordance with the provisions of Section 6 of this **AGREEMENT**.

**Section 25**  
**Federal Award**

All Federal Transit Administration (FTA) Grants and grant amounts referenced in this **AGREEMENT** are subject to Federal Award and no funds will be reimbursed to the **RECIPIENT** by the **CABINET** until Federal Award by FTA is made. The **CABINET** will notify the **RECIPIENT** once Federal Award has been made.

**Section 26**  
**Access to Records**

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. 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.

In the event of a dispute between the contractor and the contracting agency, Attorney General, or the Auditor of Public Accounts over documents that are eligible for production and review, the Finance and Administration Cabinet shall review the dispute and issue a determination, in accordance with Secretary's Order 11-004. (See attachment)

This Section (Section 26) only applies to **RECIPIENT(S)** who are non profit 501(c)(3) corporations and is not applicable to other government agencies. This includes state and federal agencies, local governments and state universities.

**Section 27**  
**Funding Out Provision**

The state agency may terminate this contract if funds are not appropriated to the contracting agency or are not otherwise available for the purpose of making payments without incurring any obligation for payment after the date of termination, regardless of the terms of the contract. The state agency shall provide the contractor thirty (30) calendar days written notice of termination of the contract.



**Section 28**  
**Agreement Change**

Any proposed change in this **AGREEMENT** must be at the mutual consent of the **RECIPIENT** and the **CABINET** and must have prior written approval of the **CABINET**.

**SECRETARY'S ORDER 11-004**

**FINANCE AND ADMINISTRATION CABINET**

**Vendor Document Disclosure**

**WHEREAS**, in order to promote accountability and transparency in governmental operations, the Finance and Administration Cabinet believes that a mechanism should be created which would provide for review and assistance to an Executive Branch agency if said agency cannot obtain access to documents that it deems necessary to conduct a review of the records of a private vendor that holds a contract to provide goods and/or services to the Commonwealth; and

**WHEREAS**, in order to promote accountability and transparency in governmental operations, the Finance and Administration Cabinet believes that a mechanism should be created which would provide for review and assistance to an Executive Branch agency if said agency cannot obtain access to documents that it deems necessary during the course of an audit, investigation or any other inquiry by an Executive Branch agency that involves the review of documents; and

**WHEREAS**, KRS 42.014 and KRS 12.270 authorizes the Secretary of the Finance and Administration Cabinet to establish the internal organization and assignment of functions which are not established by statute relating to the Finance and Administration Cabinet; further, KRS Chapter 45A.050 and 45A.230 authorizes the Secretary of the Finance and Administration Cabinet to procure, manage and control all supplies and services that are procured by the Commonwealth and to intervene in controversies among vendors and state agencies; and

**NOW, THEREFORE**, pursuant to the authority vested in me by KRS 42.014, KRS 12.270, KRS 45A.050, and 45A.230, I, Lori H. Flanery, Secretary of the Finance and Administration Cabinet, do hereby order and direct the following:

- I. Upon the request of an Executive Branch agency, the Finance and Administration Cabinet ("FAC") shall formally review any dispute arising where the agency has requested documents from a private vendor that holds a state contract and the vendor has refused access to said documents under a claim that said documents are not directly pertinent or relevant to the agency's inquiry upon which the document request was predicated.
- II. Upon the request of an Executive Branch agency, the FAC shall formally review any situation where the agency has requested documents that the agency deems necessary to conduct audits, investigations or any other formal inquiry where a dispute has arisen as to what documents are necessary to conclude the inquiry.
- III. Upon receipt of a request by a state agency pursuant to Sections I & II, the FAC shall consider the request from the Executive Branch agency and the position of the vendor or party opposing the disclosure of the documents, applying any and all relevant law to the facts and circumstances of the matter in controversy. After FAC's review is complete, FAC shall issue a Determination which sets out FAC's position as to what documents

and/or records, if any, should be disclosed to the requesting agency. The Determination shall be issued within 30 days of receipt of the request from the agency. This time period may be extended for good cause.

- IV. If the Determination concludes that documents are being wrongfully withheld by the private vendor or other party opposing the disclosure from the state agency, the private vendor shall immediately comply with the FAC's Determination. Should the private vendor or other party refuse to comply with FAC's Determination, then the FAC, in concert with the requesting agency, shall effectuate any and all options that it possesses to obtain the documents in question, including, but not limited to, jointly initiating an action in the appropriate court for relief.
- V. Any provisions of any prior Order that conflicts with the provisions of this Order shall be deemed null and void.

**IN WITNESS WHEREOF**, and intending to be legally bound hereby, the parties hereto have caused this **AGREEMENT** to be executed upon signature by proper officers and representatives on the date and year first written above:

Applicant:

  
\_\_\_\_\_  
Lexington Fayette Urban County Government (LFUCG)  
Executive Director

9/6/18

\_\_\_\_\_  
Date

Recommended Grant Approval:

  
\_\_\_\_\_  
Tara Walker, Federal Program Coordinator  
Office of Transportation Delivery

9/11/18

\_\_\_\_\_  
Date

Recommended Budget Approval:

  
\_\_\_\_\_  
Tabitha Martin, Public Transit Branch Manager (Project in Budget)  
Office of Transportation Delivery

9/11/2018

\_\_\_\_\_  
Date

Approved:

  
\_\_\_\_\_  
Eric Perez, Executive Director  
Office of Transportation Delivery

9-11-18

\_\_\_\_\_  
Date

Form and Legality:

  
\_\_\_\_\_  
Todd Shipp, Asst. General Counsel  
Office of Legal Services

8/20/18

\_\_\_\_\_  
Date

5303 Federal Grant Award Date \_\_\_\_\_

5304 Federal Grant Award Date \_\_\_\_\_

**ATTACHMENT B-5303**

AGENCY:  
 Lexington Fayette Urban County Government (LFUCG)  
 SECTION 5303 FY2019  
 KY-2017-002-02 (CFDA #20.505)  
 P030217442

KYTC/OFFICE OF TRANSPORTATION DELIVERY  
 SEC 5303 URBANIZED AREA TRANSP PLANNING  
 WORK PROGRAM/INVOICE FORM  
 JULY 1, 2018 - JUNE 30, 2019

ALI CODE	CAPITAL DESCRIPTION	CURRENT MONTHLY EXPENSES	YEAR TO DATE EXPENSES	APPROVED AMOUNT	BALANCE
ALI CODE 44.21.00	Program Support and Adm.	\$ -	\$ -	\$ 3,465	\$ 3,465
ALI CODE 44.25.00	Transportation Improvement Plan	\$ -	\$ -	\$ 12,067	\$ 12,067
ALI CODE 44.27.00	Environmental Justice	\$ -	\$ -	\$ 44,968	\$ 44,968
ALI CODE 44.27.00	Other	\$ -	\$ -		\$ -
ALI CODE 44.27.00	Other	\$ -	\$ -	\$ -	\$ -
	<b>TOTAL</b>	\$ -	\$ -	\$60,500	\$ 60,500
	FEDERAL SHARE 80%	\$0	\$0	\$48,400	\$ 48,400
	LOCAL SHARE 20%	\$0	\$0	\$12,100	\$ 12,100

AGENCY APPROVED SIGNATURE \_\_\_\_\_

DATE \_\_\_\_\_

KYTC APPROVAL \_\_\_\_\_