



Commonwealth of Kentucky
TRANSPORTATION CABINET
Frankfort, KY 40601
www.kentucky.gov

Matthew G. Bevin
Governor

April 11, 2016

Lexington Fayette Urban County Gov. Accounting
200 East Main Street
Lexington, KY 40507

Attn: Jim Gray, Mayor

Re: PO2 605 1600004840

Mr. Gray,

Please sign the attached Agreement on page **eleven (11)** in the space provided. Please place a checkmark, as well, next to the correct statements on page **nine (9)** of the agreement. Then return the original signed agreement to this office at your earliest convenience. We will send you the finalized copy of the contract when it is available.

Sincerely,

A handwritten signature in cursive script that reads "Erin Eagan".

Erin Eagan
Kentucky Transportation Cabinet
Division of Purchases
200 Mero Street, 4th Floor East
Frankfort, KY 40622



Commonwealth of Kentucky

PURCHASE ORDER

IMPORTANT

Show Doc ID number on all packages, invoices and correspondence.

Doc Description: LFUCG Signal Maintenance	
Doc ID No: PO2 605 1600004840 1	Procurement Folder: 4222273
Procurement Type: MOA/PSC Exception	Record Date:
Issued By: Erin Eagan	Cited Authority: KRS177.280
Telephone:	

C O N T R A C T O R	LEXINGTON FAYETTE URBAN COUNTY GOV ACCOUNTING
	200 E MAIN ST
	LEXINGTON KY 40507
	US

Effective From: 07/01/2016 **Effective To:** 06/30/2017

Line	CL Description	Due Date	Quantity	Unit Issue	Unit Price	Contract Amt	Total Price
1	LFUCG monthly payment to maintain signals in Fayette		12.00	MO	27,500.00000	0.00	330,000.00

Extended Description

B I L L T O	KYTC DIV OF TRAFFIC OPERATIONS	S H I P T O	321999
	200 MERO STREET		KYTC LOCATION AS STATED
	FRANKFORT KY 40622		SEE EXTENDED DESCRIPTION
	US		N/A KY

Total Order Amount: 330,000.00

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Memorandum of Agreement

between

Kentucky Transportation Cabinet and Lexington-Fayette Urban County Government

for

Operations and Maintenance of Traffic Signals and

Electrical Traffic Control Devices on the State Primary Road System

This memorandum of agreement (hereinafter, "the Agreement") is made and entered into by and between the Commonwealth of Kentucky Transportation Cabinet, Department of Highways, 200 Mero Street, Frankfort, Kentucky, 40622 (hereinafter, "the Cabinet") and the Lexington-Fayette Urban County Government, an urban county government of the Commonwealth of Kentucky pursuant to Chapter 67A of the Kentucky Revised Statutes, 200 East Main Street, Lexington, Kentucky, 40507 (hereinafter "LFUCG")

This Agreement supersedes item number six in the Maintenance and Traffic Contract between the City of Lexington and the Department of Highways dated October 12, 1972. All other portions of the October 12, 1972 contract remain in place and are not impacted by this Agreement.

WHEREAS, LFUCG, in the interest of public safety and traffic flow efficiency, has requested authority to assume certain obligations and responsibilities with regard to the Department of Highways State Primary Road System located within the boundaries of Fayette County, and

WHEREAS, the Cabinet, in the interest of public safety and traffic flow efficiency, has agreed to assign certain responsibilities with regard to traffic signalization, operations and maintenance in Fayette County to LFUCG; and

WHEREAS, the Cabinet has the authority to enter into any and all agreements inclusive of agreements with local government entities pursuant to KRS 177.043; and

WHEREAS, LFUCG has authority to elect to maintain and operate traffic signalization on roadways, located on the Department of Highways State Primary Road System within Fayette County pursuant to KRS 177.055; and

WHEREAS, the purpose of this Agreement is to set forth the duties and obligations of the parties with

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regard to the maintenance and operation of traffic signals and electrical traffic control devices on the State Primary Road System within Fayette County; and

WHEREAS, the Cabinet, and the LFUCG desire to enter into this agreement to enhance traffic management in Fayette County;

NOW, THEREFORE, in consideration of the mutual covenants expressed herein, the Cabinet and LFUCG, (collectively hereinafter "the Parties") agree as follows:

1. Effective Date - This Agreement shall become effective on July 1, 2016.

2. Scope - The terms of this Agreement shall apply to all state maintained routes in Fayette County.

3. Authorization of LFUCG - LFUCG agrees to seek approval and authorization from its Urban County Council and shall obtain and incorporate herein a resolution or other written authorization. This Agreement and all terms herein are therefore contingent upon obtaining any and all appropriate and necessary authorization from the Urban County Council.

4. Authority to Enter Into Agreement - The parties represent and warrant, by the signatures of their duly appointed representatives, that they are legally entitled to enter into this Agreement, and will not be violating, directly or indirectly, any conflict of interest statute of the Commonwealth of Kentucky by performance of the obligation imposed on them by this Agreement. The parties further represent and warrant that they have no conflict of interest, in any manner or degree, with the performance duties of this Agreement.

5. Obligations of the Cabinet - The Cabinet covenants and agrees to undertake the following obligations:
 - a. The Cabinet agrees to provide funding, not to exceed \$330,000 for a fiscal year, to the Lexington Fayette Urban County Government, Division of Traffic Engineering, for the purpose of operating and maintaining traffic signals and electrical traffic control devices on the State Primary Road System in Fayette County.

 - b. The Cabinet agrees to install new traffic signals and electrical traffic control devices, approved by the Cabinet, on the State Primary Road System in Fayette County, in accordance with the standards,

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specifications, and policies of the Cabinet. All new installations made under this agreement shall be property of the Cabinet.

- c. The Cabinet, after the initial turn on of a new traffic signal or electrical traffic control device installed by the Cabinet, or by a contractor through the encroachment permit process, agrees to delegate the operation and maintenance to LFUCG.

- d. The Cabinet agrees to provide materials as necessary to repair and maintain traffic signals and electrical traffic control devices on the State Primary Road System in Fayette County from the Cabinet's warehouse stock. The Cabinet will not provide specialized equipment or materials that exceed the Cabinet's specifications. The Cabinet has first right of refusal for State owned equipment removed as a result of work accomplished under this agreement.

- e. At the discretion of the Cabinet, and upon the written request of LFUCG, specialized materials and major projects, beyond the capabilities of LFUCG, and beyond the scope of the agreement, may be approved and completed by the Cabinet, or as mutually agreed upon by both parties.

- 6. Obligations of LFUCG - LFUCG covenants and agrees to undertake the following obligations:
 - a. LFUCG agrees to maintain and operate the traffic signals and electrical traffic control devices on roadways located on the Department of Highways State Primary Road System within Fayette County.

 - b. LFUCG shall comply with all applicable federal and state statutes, executive orders, regulatory requirements, and policies, including, but not limited to, 23 CFR Part 655, the Manual on Uniform Traffic Control Devices and amendments thereto, and the Division of Traffic Operations Guidance Manual.

 - c. LFUCG agrees to accept the maintenance and operations of new traffic signals and electrical traffic control devices installed by the Cabinet, or by a contractor through the encroachment permit process, under the terms of the Agreement.

 - d. LFUCG shall be responsible for all media and citizen inquiries and all public relations regarding the traffic signals and electrical traffic control devices for which they are responsible. This provision shall not prohibit or otherwise interfere with any state-wide or county-wide public relations efforts undertaken by the Cabinet that may have some impact on aforementioned traffic signal locations.

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- e. LFUCG shall be responsible for employing adequate staffing to provide the labor and services related to the safe and efficient operation of the computerized traffic signal control system and the timely and necessary maintenance of the Fayette County traffic signals and electrical traffic control devices.
- f. LFUCG shall take no action which impedes or negatively impacts the Lexington Area Metropolitan Planning Organization Long Range Plan, Transportation Improvement Plan or Six Year Highway Plan or the process related thereto.
7. **Mutuality of Obligations** - The Parties agree that the obligations imposed upon them are for the benefits of the parties. Timely fulfillment of each and every obligation in accordance with this memorandum is necessary. The failure of any party to fulfill any of its obligations under this memorandum or the failure of any event to occur by a date established by this memorandum shall constitute a breach of the Agreement unless the fulfillment of such obligation is waived or modified by written Agreement of the parties.
8. **Assurances** - Where required by law, the parties to this memorandum shall comply with the Executive Branch Code of Ethics and all applicable state and federal statutes relating to non-discrimination. LFUCG shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, or age. LFUCG further agrees to applicable federal regulations relating thereto prohibiting discrimination against otherwise qualified disabled individuals under any program or activity. LFUCG 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. LFUCG agrees to post in conspicuous places available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.
9. **Term** - This agreement shall be in effect from the effective date, as set forth in paragraph 1 of this Agreement, to June 30, 2017.
10. **Termination** - Any party shall have the right to terminate and cancel this Agreement at any time by giving thirty (30) days written notice served on the other parties by registered or certified mail. This termination clause, if executed, shall be effective on the first day of a calendar month.
11. **Payment** - The Cabinet shall pay LFUCG, within 30 working days, all approved billings for labor including engineering costs, material, and equipment in the performance of the work as outlined in the

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Agreement. LFUCG shall submit these billings on a monthly invoice equal to 1/12 of the annual contract amount. Total payments under the Agreement shall not exceed \$330,000 for a fiscal year. If the contract begins or terminates on a date other than the beginning or end of the fiscal year, only billing increments of 1/12 of the total annual contract amount will be considered for payment. No payment will be made for work occurring outside the effective dates of the agreement.

12. Audits and Inspections - LFUCG agrees that the Cabinet, the Finance 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 the Agreement for the purpose of financial audit or program review.
13. Modifications - No modification or change of any provision in this Agreement shall be made, or construed to have been made, unless such modification is mutually agreed to in writing by the parties hereto.
14. Hold Harmless - LFUCG shall hold harmless the Cabinet, the Commonwealth, its officers, employees, agents and contractors, from any action or claim against those parties resulting from or based upon this Agreement, including but not limited to any liability resulting from discretionary decisions made by LFUCG with regard to traffic signalization, pursuant to the authority transferred to LFUCG by this Agreement.
15. Disputes - Any dispute concerning a question of fact in connection with work performed pursuant to this Agreement that cannot be disposed of by agreement between the parties shall be referred to the Secretary of the Transportation Cabinet of the Commonwealth of Kentucky, or his duly authorized representative, whose decision shall be final. Any dispute concerning a question of law shall be governed by the laws of the Commonwealth of Kentucky. The parties hereto agree that any legal action brought on the basis of this Agreement shall be filed in the Franklin County Circuit Court of the Commonwealth of Kentucky.
16. Communications - Unless otherwise instructed, all notices, consents, and other communications required and/or permitted by the Contract shall be in writing. All programmatic communications are to be made to the Agency Contact Person listed below with a copy to the Division of Purchases.

Kerry Roberts

Division of Traffic

Kentucky Transportation Cabinet

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200 Mero Street
Frankfort, KY 40622
Phone: 502-564-3020
Kerry.Roberts@ky.gov

With copy to:

Erin Eagan
Division of Purchases
Kentucky Transportation Cabinet
200 Mero Street 4th Floor East
Frankfort, KY 40622
Phone: 502-564-4630
Email: Erin.Eagan@ky.gov

17. Additional Clauses

Cancellation clause:

Either party may cancel the contract at any time for cause or may cancel without cause on 30 days' written notice.

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.

Reduction in Contract Worker Hours:

The Kentucky General Assembly may allow for a reduction in contract worker hours in conjunction with a budget balancing measure for some professional and non-professional service contracts. If under such authority the agency is required by Executive Order or otherwise to reduce contract hours, the contract will be reduced by the amount specified in that document.

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Access to Records:

The state agency certifies that it is in compliance with the provisions of KRS 45A.695. "Access to contractor's books, documents, papers, records, or other evidence directly pertinent to the contract." The 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.

Effective Date:

All Memorandum of Agreements are not effective until the secretary of the Finance and Administration Cabinet or his authorized designee has approved the contract and until the contract has been submitted to the government contract review committee. However, Memoranda of Agreements \$50,000 or less are exempt from review by the committee and need only be filed with the committee within 30 days of their effective date for informational purposes only as provided under KRS 45A.700.

KRS 45A.695(7) Payments on personal service contracts and memoranda of agreements shall not be authorized for services rendered after government contract review committee disapproval, unless the decision of the committee is overridden by the secretary of the Finance and Administration cabinet or agency head, if the agency has been granted delegation authority by the secretary.

Violation of tax and employment laws

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

To comply with the provisions of KRS 45A.485, the contractor shall report any such final determination(s) of violation(s) to the Commonwealth by providing the following information regarding the final determination(s): the KRS violated, the date of the final determination, and the state agency which issued the final determination.

KRS 45A.485 also provides that, for the duration of any contract, the contractor shall be in continuous compliance with the provisions of those statutes which apply to the contractor's operations, and that the contractor's failure to reveal a final determination as described above or failure to comply with the above statutes for the duration of the contract, shall be grounds for the Commonwealth's cancellation of the

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

Contractor must check one:

The contractor has not violated any of the provisions of the above statutes within the previous five (5) year period.

The contractor has violated the provisions of one or more of the above statutes within the previous five (5) year period and has revealed such final determination(s) of violation(s). A list of such determination(s) is attached

Registration with the Secretary of State by a Foreign Entity:

Pursuant to KRS 45A.480(1)(b), an agency, department, office, or political subdivision of the Commonwealth of Kentucky shall not award a state contract to a person that is a foreign entity required by KRS 14A.9-010 to obtain a certificate of authority to transact business in the Commonwealth ("certificate") from the Secretary of State under KRS 14A.9-030 unless the person produces the certificate within fourteen (14) days of the bid or proposal opening. Therefore, foreign entities should submit a copy of their certificate with their solicitation response. If the foreign entity is not required to obtain a certificate as provided in KRS 14A.9-010, the foreign entity should identify the applicable exception in its solicitation response. Foreign entity is defined within KRS 14A.1-070.

For all foreign entities required to obtain a certificate of authority to transact business in the Commonwealth, if a copy of the certificate is not received by the contracting agency within the time frame identified above, the foreign entity's solicitation response shall be deemed non-responsive or the awarded contract shall be cancelled.

Businesses can register with the Secretary of State at <https://secure.kentucky.gov/sos/ftbr/welcome.aspx>

Discrimination:

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

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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.

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IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

APPROVED AS TO FORM KENTUCKY TRANSPORTATION CABINET
AND LEGALITY Department of Highways

BY:  BY: _____
Greg Thomas, Acting Secretary

LEXINGTON - FAYETTE URBAN COUNTY
GOVERNMENT

BY: _____ BY: _____
Jim Gray, Mayor

