

## Memorandum of Agreement Terms and Conditions

This Memorandum of Agreement (MOA) is entered into, by and between the Commonwealth of Kentucky, Justice and Public Safety Cabinet, Kentucky State Police ("the Commonwealth") and the Lexington-Fayette Urban County Government, Lexington Police Department ("the Contractor") to establish an agreement for performance and administration of the Commonwealth's Motor Carrier Safety Assistance Program ("MCSAP"). The initial MOA is effective from November 1, 2020 through September 30, 2022.

### Scope of Services:

Whereas, the Commonwealth serves as Kentucky's lead MCSAP agency, thereby receiving annual MCSAP funding from the United States Department of Transportation, Federal Motor Carrier Safety Administration ("FMCSA"); in order to implement the TACT (Ticketing Aggressive Cars and Trucks) grant program in Kentucky, and

Whereas, the Contractor possess the human resources to conduct TACT-related activities as specified in 49 CFR 350.403; and

Whereas, the Commonwealth is willing to provide a specified amount of FMCSA funds annually in exchange for activities by Contractor, which is eligible for reimbursement under the TACT Grant; and

Whereas, it is in the best interest of both parties to conduct the aforementioned exchange, and in consideration of the terms and conditions hereinafter set forth, the parties to this MOA hereby agree as follows:

1. The Commonwealth shall provide any training and/or program technical assistance appropriate for the successful operation of the Contractor's portion of the TACT Grant.
2. The Contractor shall conduct TACT Grant activities in accordance with the TACT Grant application and as directed by the Commonwealth.
3. The Contractor agrees to program monitoring of its TACT Grant activities, including administrative and fiscal functions within 30 days of the final execution of this MOA.
4. The Contractor agrees to provide the reporting of all TACT Grant related activity and other documentation as directed by the Commonwealth on a bi-weekly basis.
5. The Commonwealth agrees to reimburse the Contractor as set forth more fully in the Pricing section herein.
6. The Contractor, in accordance with 49 CFR 350.223 shall make in-kind contributions, in an amount up to fifteen percent of the total program costs as defined in the grant award notice.
7. All TACT Grant funds allocated to the Contractor will be utilized for personnel expenses only. No funds are available for equipment purchases.
8. If the Contractor expends \$300,000 or more annually in federal Awards, the agency shall have a single or program-specific audit conducted for that year in accordance with the provisions of the Office of Management and Budget ("OMB") Circular A-133.

### Other terms and conditions:

1. The Contractor shall comply with all applicable federal, state, and local laws, regulations, and ordinances, including but not limited to, KRS 61.931, et seq., the Family Educational Rights and Privacy Act (and associated regulations), the Health Insurance Portability and Accountability Act (and associated regulations), and the Kentucky Model Procurement Code (and associated regulations, including 200 KAR 5:021).
2. The Contractor shall comply with all applicable Commonwealth Office of Technology policies and procedures, including but not limited to:
  - 2.1. Kentucky Information Technology Standards (KITS) (<http://technology.ky.gov/Governance/Pages/KITS.aspx>);
  - 2.2. Enterprise Security Policies (<http://technology.ky.gov/ciso/Pages/InformationSecurityPolicies,StandardsandProcedures.aspx>);
  - 2.3. Enterprise Policies (<http://technology.ky.gov/policy/pages/policies.aspx>); and
  - 2.4. Enterprise IT Policies (<http://finance.ky.gov/services/policies/Pages/default.aspx>).

3. To the extent permitted by law, the Contractor shall report to the Commonwealth in writing, within three (3) business days of the discovery, any acts or omissions constituting a violation of (1) this Agreement; (2) applicable federal, state, or local laws, regulations, or ordinances; or (3) applicable COT policies and procedures.
4. To the extent permitted by law, the Contractor shall indemnify, defend, and hold harmless, the Commonwealth of Kentucky and its cabinets, departments, bureaus, agencies, officers, agents, or employees, from all claims, suits, proceedings, costs, losses, expenses, damages and liabilities, of any character, type or description, caused by, arising out of, or in connection with, this Agreement.
5. The Commonwealth does not approve, authorize, or ratify any acts or omissions of the Contractor or its officers, employees, agents, or subcontractors that violate federal, state, or local, laws, regulations, or ordinances.
6. Contractor shall procure and maintain in effect during the term of this Agreement all permits, certifications, and licenses required by law for the performance of the work to be performed pursuant to this Agreement.
7. The Contractor shall not represent that a working copy, draft, or final version, of this Agreement is identical to a previous iteration of this Agreement if the Contractor has made edits since the last iteration. The Contractor shall clearly present all edits, either through editing functions in word processing software, or as a list provided contemporaneously with the most recently edited iteration.
8. The Contractor shall require its agents, employees, subcontractors, or any other individuals or entities acting on behalf of the Contractor that provides services pursuant to this agreement to comply with all applicable provisions of this Agreement.
9. Each party shall provide a contact to resolve any issues related to this Agreement and promptly update the contact information as necessary.
10. Except as otherwise expressly provided herein, all notices, requests, or other communications provided for in, or pertaining to, this Agreement will be made in writing either: (a) by personal delivery, (b) by facsimile or electronic mail with confirmation of receipt, (c) by mailing in the United States mails or (d) by express courier service. The notice, request, or other communication will be deemed to be received upon personal delivery, upon confirmation of receipt of facsimile or electronic mail transmission or upon receipt by the party it is sent to if by United States mail or express courier service; provided, however, that if a notice, request, or other communication is not received during regular business hours, it will be deemed to be received on the next succeeding business day.
11. Both parties shall have the right to terminate and cancel this contract at any time not to exceed thirty (30) days' written notice served on the other party by registered or certified mail.
12. This Agreement is subject to the laws of the Commonwealth of Kentucky and where applicable federal law. Any litigation with respect to this Agreement shall be brought in state or federal court in Franklin County, Kentucky. Each Party hereby consents to the jurisdiction and venue of such courts and waives all objections as to forum non conveniens or similar doctrine.
13. Nothing in this Agreement shall be deemed to waive, or otherwise limit, the rights, privileges, immunities, and matters of defense, now available or hereafter made available, to the Commonwealth of Kentucky, and any of its cabinets, departments, bureaus, agencies, officers, agents, or employees.

**Pricing:**

1. The Commonwealth shall reimburse the Contractor for any TACT Grant-eligible costs, as submitted in the budgetary portion of the TACT Grant, in an amount up to \$20,000.00 each Federal fiscal year (FFY) as authorized by the Commonwealth and the TACT Grant Program Manager.
2. The Contractor agrees to file **monthly** claims for reimbursement and the Commonwealth agrees to reimburse on a quarterly basis, once an invoice with adequate supporting documentation of costs (e.g. payroll runs, invoices, proofs of payment, etc.) has been submitted.
3. The Contractor agrees to submit the final claim for the MOA period within 30 days of the ending date.

**Memorandum of Agreement Standard Terms and Conditions:**

**1.00 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 agreement and until the agreement has been submitted to the government contract review committee. However, in accordance with KRS 45A.700,

memoranda of agreement in aggregate amounts of \$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.

KRS 45A.695(7) provides that payments on personal service contracts and memoranda of agreement 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.

## **2.00 EEO Requirements**

The Equal Employment Opportunity Act of 1978 applies to All State government projects with an estimated value exceeding \$500,000. The contractor shall comply with all terms and conditions of the Act.

## **3.00 Cancellation clause:**

Both parties shall have the right to terminate and cancel this contract at any time not to exceed thirty (30) days' written notice served on the Contractor by registered or certified mail.

## **4.00 Funding Out Provision:**

The state agency may terminate this agreement 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 agreement. The state agency shall provide the Contractor thirty (30) calendar day's written notice of termination of the agreement due to lack of available funding.

## **5.00 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 agreement will be reduced by the amount specified in that document. If the contract funding is reduced, then the scope of work related to the contract may also be reduced commensurate with the reduction in funding. This reduction of the scope shall be agreeable to both parties and shall not be considered a breach of contract.

## **6.00 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, 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 agreement for the purpose of financial audit or program review. 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. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the agreement and shall be exempt from disclosure as provided in KRS 61.878(1)(c).

## **7.00 Violation of tax and employment laws:**

KRS 45A.485 requires the Contractor and all subcontractors performing work under the agreement 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 corporate and utility tax, sales and use 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 and all subcontractors performing work

under the agreement 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 and all subcontractors performing work under the agreement shall be in continuous compliance with the provisions of those statutes, which apply to their operations, and that their failure to reveal a final determination as described above, or failure to comply with the above statutes for the duration of the agreement shall be grounds for the Commonwealth's cancellation of the agreement and their disqualification from eligibility for future state contracts for a period of two (2) years.

[Check box section below need only be included for Contractors that are quasi-governmental entities or 501(c)3 non-profit entities.]

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). Attached is a list of such determination(s), which includes the KRS violated, the date of the final determination, and the state agency which issued the final determination.

#### **8.00 Discrimination:**

This section applies only to agreements disbursing federal funds, in whole or part, when the terms for receiving those funds mandate its inclusion. Discrimination (because of race, religion, color, national origin, sex, sexual orientation, gender identity, age, or disability) is prohibited. During the performance of this agreement, the Contractor agrees as follows:

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.

In all solicitations or advertisements for employees placed by or on behalf of the Contractor, the Contractor will, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability.

The Contractor will send to each labor union or representative of workers with which he/she 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.

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.

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.

In the event of the Contractor's noncompliance with the nondiscrimination clauses of this agreement or with any of the said rules, regulations or orders, this agreement 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.

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.

*[Signature page follows]*

#### **APPROVALS**

This MOA is subject to the terms and conditions stated herein. By affixing signatures below, the parties

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

Kentucky State Police (Commonwealth)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Title

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

Lexington Police Department (Contractor)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Mayor  
Title

Linda Gorton  
\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Date

Approved as to form and legality

\_\_\_\_\_  
Attorney for Kentucky State Police