

**AGREEMENT BETWEEN THE
KENTUCKIANA REGIONAL PLANNING AND DEVELOPMENT AGENCY
AND
LOUISVILLE-JEFFERSON COUNTY METRO GOVERNMENT**

This Agreement is entered into as of _____, 2017, by and between the Kentuckiana Regional Planning and Development Agency, hereinafter referred to as "KIPDA", and Louisville-Jefferson County Metro Government, hereinafter referred to as the "METRO GOVERNMENT."

**PART I
SPECIFIC PROVISIONS**

Whereas, KIPDA desires to engage the METRO GOVERNMENT to render **technical or professional transportation planning/data collection services** as indicated in KIPDA's *Fiscal Year 2018 Unified Planning Work Program* to be funded by grants from one or more of the following: the Federal Transit Administration (FTA), the Federal Highway Administration (FHWA), the Kentucky Transportation Cabinet (KYTC), and the Indiana Department of Transportation (INDOT); and

Whereas, the METRO GOVERNMENT has expressed a willingness to render the desired services;

Now therefore, in consideration of the mutual covenants, promises and representations herein, the parties hereto agree as follows:

SECTION 1 THE AGREEMENT

This Agreement shall consist of this Part I entitled Specific Provisions; Part II entitled Terms and Conditions; Part III entitled Project Budget; and Part IV entitled Scope of Work.

SECTION 2 SERVICES

The METRO GOVERNMENT agrees to perform, or have performed, the services as described in the Scope of Work which is Part IV of this Agreement, and in accordance with the terms and conditions of this Agreement.

SECTION 3 COMPENSATION

The total amount of compensation to be paid by KIPDA to the METRO GOVERNMENT for services outlined in Part IV Scope of Work shall not exceed **\$130,000**. Payment will be made in accord with the terms and conditions set forth in Part III, Project Budget.

SECTION 4 PERIOD OF PERFORMANCE

This Agreement shall commence as of July 1, 2017, and terminate as of June 30, 2018. All of the services and work required in the Scope of Work shall be completed on or

before the termination date unless approved in writing by KIPDA in accordance with Part II, Section 2, Subpart D.

SECTION 5 PROJECT FUNDING

- A. It is expressly understood that funds for this Project are to be expended only for the purpose and activities covered by Scope of Work and Project Budget.
- B. The total eligible cost of the Project shall not exceed the amount stated in the Project Budget unless approved in writing by KIPDA in accordance with Part II, Section 2, Subpart D.
- C. It is expressly understood and agreed that the final claim shall be submitted to KIPDA no later than twenty-five (25) days after the termination date of this Agreement.

SECTION 6 REQUEST FOR PAYMENT

The METRO GOVERNMENT agrees to adhere to all payment procedures of KIPDA during the term of this Agreement. Payment for any cost pursuant to this section shall not constitute a final determination by KIPDA of the allowability of such cost and shall not constitute a waiver of any violation of the terms of this Agreement committed by the METRO GOVERNMENT. The METRO GOVERNMENT shall reimburse KIPDA for all funds spent on said ineligible work. For the METRO GOVERNMENT to be reimbursed for costs which are not listed in the Project Budget, and for costs of out-of-town travel and equipment purchases, the METRO GOVERNMENT must obtain prior written approval from KIPDA.

SECTION 7 INSURANCE

The METRO GOVERNMENT shall comply with all applicable insurance, surety bonds, and qualifications of State and Local law. KIPDA understands that the METRO GOVERNMENT is self-insured for Commercial General Liability and Commercial Automobile Liability under the Louisville Area Government Insurance Trust. METRO GOVERNMENT also maintains and appropriates funds for the Self-Insurance Program for Workers' Compensation coverage to METRO GOVERNMENT employees.

SECTION 8 LEGAL AUTHORITY

The METRO GOVERNMENT hereby assures and certifies with respect to this Agreement that it possesses the legal authority to execute and administer this Agreement.

IN WITNESS WHEREOF, the Kentuckiana Regional Planning and Development Agency and Louisville-Jefferson County Metro Government have by their duly authorized officials entered into this Agreement.

**Louisville-Jefferson County
Metro Government**

**Kentuckiana Regional Planning and
Development Agency**

BY: _____
Greg Fischer
Mayor

BY: _____
Jack Couch
Executive Director

Date: _____

Date: _____

Recommended:

Approved as to form and legality:

BY: Vanessa Burns
Vanessa Burns
Director, Public Works & Assets

BY: Mitzi Wyrick
Mitzi Wyrick
KIPDA Counsel

Date: 8/22/17

Date: 8/17/17

Approved as to form and legality:

BY: _____
Mike O'Connell
Jefferson County Attorney

Date: _____

**PART II
TERMS AND CONDITIONS**

SECTION 1 DEFINITIONS AS USED IN THIS AGREEMENT:

- A. "Project" means the task or set of tasks provided, as set forth in Part IV, which the METRO GOVERNMENT undertakes to perform pursuant to this Agreement.
- B. "U.S.D.O.T." means the U. S. Department of Transportation, including the Federal Transit Administration (FTA) and the Federal Highway Administration (FHWA), or any persons duly authorized to perform the functions required under this Agreement by the U.S.D.O.T.
- C. "INDOT" means the Indiana Department of Transportation.
- D. "KYTC" means the Kentucky Transportation Cabinet.
- E. "STATE" means the Commonwealth of Kentucky and/or the State of Indiana.

SECTION 2 ACCOMPLISHMENT OF THE PROJECT

A. General Requirements

The METRO GOVERNMENT shall undertake, and complete the Project in a sound, economical, and efficient manner, and in accordance with the provisions hereof, all applicable Federal, State and Local laws, and regulations and directives issued by the INDOT, KYTC and the U.S.D.O.T.

B. Applicable Laws

- (1) In performance of its obligations pursuant to this Agreement, the METRO GOVERNMENT and its subcontractors shall comply with all applicable provisions of Federal, State, and Local law, and obtain the necessary licenses, permits, certificates, or consents which may be required in order to complete the Project. All limits or standards set forth in this Agreement to be observed in the performance of the Project are minimum requirements. If there is a conflict between Federal and State requirements, the METRO GOVERNMENT shall inform KIPDA in order that an appropriate resolution may be arranged. The METRO GOVERNMENT agrees further that no Federal funds may be used for the payment of ordinary governmental or non-project operating expenses.
- (2) Insofar as any provisions of the Agreement that are not governed by Federal law and the regulations required thereby, or incorporated herein by reference, the provisions then shall be construed and interpreted solely in accordance with the laws of Kentucky. Furthermore, the parties hereto agree that any legal action which is brought on the basis of this Agreement shall be filed in the Jefferson County Circuit Court of the Commonwealth of Kentucky.

C. Submission of Reports, Proceedings, Contracts and Other Documents

The METRO GOVERNMENT shall submit to KIPDA such data, reports, records, contracts, and other documents relating to the Project as KIPDA may require. The METRO GOVERNMENT shall retain intact, for four (4) years from the date of final payment, all Project documents, financial records, and supporting documents.

D. Amendments

The METRO GOVERNMENT shall immediately notify KIPDA of any change in conditions, or of any other event, which may significantly affect its ability to perform the Project in accordance with the provisions of this Agreement. Any proposed change in this Agreement must be by the mutual consent of the METRO GOVERNMENT and KIPDA and must have prior written approval of KIPDA. In no event shall any amendment to this Agreement be valid unless incorporated in writing into this Agreement.

E. Subcontracts

(1) KIPDA shall not be subject to any obligations or liabilities by subcontractors of the METRO GOVERNMENT, or any other person not a party to this Agreement in connection with the performance of this Project without its specific written consent.

(3) The METRO GOVERNMENT shall not assign any interest in this Agreement and shall not transfer any interest in the same, or execute any lease, mortgage, lien or subcontract relating to this Agreement or affecting Project facilities or equipment, or obligate itself in any manner with any third party with respect to its rights and responsibilities under this Agreement without the prior written consent of KIPDA. The METRO GOVERNMENT shall not, by any act or omission of any kind, impair its continuing control over the use of Project facilities or equipment during the useful life thereof. All subcontracts must be approved by KIPDA prior to the METRO GOVERNMENT executing the subcontract. Any such subcontract approved by KIPDA which exceeds \$25,000 in cost shall contain all of the contract clauses as provided in this Agreement.

SECTION 3 ACCOUNTING RECORDS

A. Project Accounts

The METRO GOVERNMENT shall establish and maintain as a separate set of accounts, or within the framework of an established accounting system, accounts for the Project in a manner consistent with the Office of Management and Budget (OMB) circulars applicable to the METRO GOVERNMENT.

B. Documentation of Project Costs

All costs charged to the Project shall be supported by properly executed payrolls, time records, invoices, contracts or vouchers describing in detail the nature and propriety of the charges. Such records, together with supporting documents, shall be retained for a minimum period of four (4) years from the date of final payment under this Agreement.

C. Allowable Costs

Expenditures made by the METRO GOVERNMENT shall be reimbursable as allowable costs to the extent that they meet all of the requirements set forth below. They must:

- (1) Be made in conformance with the Project Description and the Project Budget and all other provisions of this Agreement;
- (2) Be necessary in order to accomplish the Project;
- (3) Be reasonable in amount for the goods or services purchased;
- (4) Be agreed upon fees or actual net costs to the METRO GOVERNMENT (i.e., the price paid minus any refunds, rebates, or other items of value received by the METRO GOVERNMENT that have the effect of reducing the cost actually incurred);
- (5) Be incurred (and be for work performed) during the period from July 1, 2017 through June 30, 2018, unless specific authorization from KIPDA to the contrary is received;
- (6) Be satisfactorily documented; and
- (7) Be treated uniformly and consistently under accounting principles and procedures approved or prescribed by the U.S.D.O.T. and KIPDA for the METRO GOVERNMENT; and those approved or prescribed by the METRO GOVERNMENT for its subcontractors.

D. Audits, Inspections and Monitoring

- (1) The METRO GOVERNMENT shall permit KIPDA, the INDOT, KYTC, or any federal agency, or any of their duly authorized representatives, to have full access to and the right to examine all audit documents and records of the METRO GOVERNMENT related to this Agreement, in accordance with compliance guidelines established by the Indiana State Board of Accounts or Kentucky State Auditor, and to inspect all Project equipment and property for a period of four (4) years from the date of final payment under this Agreement.
- (2) The METRO GOVERNMENT shall include in all of its contracts under this Agreement, a provision that KIPDA, INDOT, KYTC, the U.S.D.O.T., the

U.S. Comptroller General or any of their duly authorized representatives will have full access to and the right to examine any pertinent documents or records of any such subcontractor involving transactions related to this Agreement for a period of four (4) years from the date of the final payment under this Agreement.

E. Interest

The following requirements apply to the METRO GOVERNMENT:

- (1) Any interest earned on Federal funds by the METRO GOVERNMENT must be identified and remitted to KIPDA except as provided by section 203 of the Intergovernmental Cooperation Act of 1968, 42 U.S.C. Sec. 4213.
- (2) Upon notice by KIPDA to the METRO GOVERNMENT of specific amounts due the U.S.D.O.T., the METRO GOVERNMENT shall promptly remit any excess payment of amounts or disallowed costs to KIPDA. Interest may be assessed from the time of notice and charged for any amounts due to the U.S.D.O.T. that are not paid as set forth in the Treasury Fiscal Requirements Manual.

SECTION 4 PROJECT SETTLEMENT, COMPLETION REPORT, AND CLOSE-OUT

A. Completion Report

Upon successful completion of the Project or upon termination by KIPDA, the METRO GOVERNMENT shall, within twenty-five (25) days of the completion date of the Project, submit a final project Completion Report. The format of the report shall follow specifications provided by KIPDA.

B. Disputes

Any dispute concerning a question of fact in connection with the work not disposed of by Agreement between the METRO GOVERNMENT and KIPDA shall be referred to the Executive Director of KIPDA, or his duly authorized representative, whose decision shall be final.

SECTION 5 LIABILITY

- A. All grants, payments and obligations of KIPDA under this Agreement are subject to the receipt of funds by KIPDA from the U.S.D.O.T., INDOT, and/or KYTC. KIPDA shall not be liable to the METRO GOVERNMENT for any failure or delay in performance of its obligations to the METRO GOVERNMENT which are the result of any failure or delay in performance between KIPDA and the U.S.D.O.T.
- B. The METRO GOVERNMENT shall procure and maintain, at its expense and without expense to KIPDA, until final payment by KIPDA for the services covered

by this Agreement, insurance of the kinds and in the amounts hereinafter provided, covering all operations under this Agreement performed by the METRO GOVERNMENT or its subcontractors. The METRO GOVERNMENT shall maintain a certificate in its files showing that it has complied with this Section.

- (1) METRO GOVERNMENT maintains and appropriates funds for the Self-Insurance Program for Workers' Compensation coverage to employees of the METRO GOVERNMENT. METRO GOVERNMENT is in compliance with KRS 342.340 of the Workers' Compensation Act and has received the Certificate of Self-Insurance as proof of ability to pay compensation claims, effective through December 31, 2018. If requested, METRO GOVERNMENT agrees to provide KIPDA with a Certificate of Self Insurance evidencing Workers' Compensation Coverage.
- (2) Liability Insurance: Pursuant to Ordinance No. 11, Series 2003, the METRO GOVERNMENT is self-insured for all properly asserted General Liability and Automobile Liability claims brought against it to which the METRO GOVERNMENT does not otherwise have a legal defense. In addition, the METRO GOVERNMENT agrees to keep in full force and effect Excess Self Insurance coverage for all properly asserted claims brought against it to which the METRO GOVERNMENT does not otherwise have a legal defense, covering Bodily Injury, Property Damage, and Personal Injury Liability under the "Louisville Area Governmental Self Insurance Trust," as long as such coverage is available. The Limit of Liability provided by such Excess coverage shall be at least \$1,000,000.00 per Occurrence under a Combined Single Limit format. If requested, METRO GOVERNMENT agrees to provide KIPDA a Certificate of Self Insurance from the Louisville Area Governmental Self Insurance Trust.
- (3) Subcontractors of METRO GOVERNMENT will be required to provide METRO GOVERNMENT with Certificates of Insurance evidencing the following coverages:
 - a) Commercial General Liability via the Occurrence Form with a \$1,000,000 Combined Single Limit for any one Occurrence for Bodily Injury, Personal Injury and Property Damage, including Premises Operations, Products and Completed Operations, Contractual Liability, Broad Form Property Damage, Independent Contractors Protective Liability and Personal Injury.
 - b) Commercial Automobile Liability, insuring all Owned, Non-Owned and Hired Motor Vehicles. The minimum coverage Liability Limit is \$1,000,000 Combined Single Limit for any one accident.
 - c) Workers' Compensation insuring the employers' obligations under Kentucky Revised Statutes Chapter 342 at Statutory Limits, and Employers Liability at \$100,000 Each Accident/\$500,000 Disease-Policy Limit/\$100,000 Disease Each Employee.

SECTION 6 INDEMNIFICATION

- A. It shall be the responsibility of the METRO GOVERNMENT to obtain authorization for use of documents or materials subject to property rights of any private person or other legal entity. The METRO GOVERNMENT agrees to indemnify the U.S.D.O.T., the INDOT, KYTC and KIPDA for any damages they might incur as a result of non-negligent use of documents or materials submitted by the METRO GOVERNMENT which are subject to property rights of a third party.
- B. The METRO GOVERNMENT agrees to indemnify, defend and hold harmless the U.S.D.O.T., the INDOT, KYTC, and KIPDA, and its agents, officers and employees from all claims and suits for loss of or damage to property, including the loss of use thereof and injuries to or death of persons; including the property of, officers and employees of the METRO GOVERNMENT; and from all judgments recovered therefrom, and from expenses in defending said claims, or suits, including court costs, attorney's fees and other expenses, caused by any negligent act or omission of the METRO GOVERNMENT, their officers and employees, and not caused by the sole fault or negligence of the U.S.D.O.T., the INDOT, KYTC, and KIPDA, or their respective agents, officers and employees.
- C. The METRO GOVERNMENT agrees to require its subcontractors to indemnify U.S.D.O.T., the INDOT, KYTC, KIPDA, and their respective officers, agents and employees under the same terms as METRO GOVERNMENT is agreeing to indemnification of U.S.D.O.T., the INDOT, KYTC, KIPDA, and their respective officers, agents and employees in Section 6.B. herein.

SECTION 7 TERMINATION AND BREACH

- A. KIPDA or the METRO GOVERNMENT may suspend or terminate this Agreement in whole, or in part, when both parties agree that the continuation of the project would not produce beneficial results commensurate with the further expenditures of funds. The two parties shall agree upon the termination conditions, including the effective date and in the case of partial termination, the portion to be terminated. The METRO GOVERNMENT shall not incur new obligations for the terminated portion after the effective date, and shall cancel as many outstanding obligations as possible. KIPDA shall allow full credit to the METRO GOVERNMENT for the Federal, INDOT, and KYTC share of any non-cancelable obligations, properly incurred by the METRO GOVERNMENT prior to termination.
- B. KIPDA may suspend or terminate this Agreement in whole, or in part, at any time before the date of completion, whenever KIPDA determines that the METRO GOVERNMENT has failed to comply with the terms and conditions of this Agreement. KIPDA shall notify the METRO GOVERNMENT in writing of the determination and the reasons for the termination together with the effective date of such termination at least thirty (30) days before the effective date of such termination. Any failure to make progress, which significantly endangers substantial performance of this Project within a reasonable time, shall be deemed

to be a violation of the terms of this Agreement. Discontinued use of Project equipment during its useful life shall also be deemed a violation of the terms.

- C. KIPDA may terminate this Agreement immediately for cause upon written notice served upon the METRO GOVERNMENT by registered mail with return receipt requested.
- D. In the event of termination, all finished or unfinished documents or other materials prepared by the METRO GOVERNMENT under this Agreement, at the option of KIPDA, shall be delivered within twenty (20) days to KIPDA and become its property. The METRO GOVERNMENT shall be entitled to just and equitable compensation for any satisfactory work completed on such documents and materials. The phrase "satisfactory work completed" shall mean to the satisfaction of KIPDA and shall be applied to demand accurate, diligent and able workmanship from METRO GOVERNMENT. If the METRO GOVERNMENT fails to make such delivery, then the METRO GOVERNMENT shall pay to KIPDA any damage it may sustain by reason thereof.
- E. Upon termination of the Project and cancellation of this Agreement, the METRO GOVERNMENT agrees to dispose of any Project equipment in accordance with KIPDA requirements.
- F. The METRO GOVERNMENT shall not be relieved of liability to KIPDA for damages sustained by KIPDA by virtue of any breach of this Agreement by the METRO GOVERNMENT. KIPDA may withhold any payments to the METRO GOVERNMENT for the purpose of set-off until such time as the exact amount of damages due KIPDA from the METRO GOVERNMENT is determined. The METRO GOVERNMENT will be reimbursed for all non-cancelable obligations incurred prior to termination. The acceptance of a remittance by KIPDA or any or all Project funds previously received by the METRO GOVERNMENT or the closing out of Federal, INDOT, and KYTC financial participation in the Project shall not constitute a waiver of any claim which KIPDA, INDOT, KYTC or the U.S.D.O.T. may otherwise have arising out of this Agreement.

SECTION 8 FEDERAL AND STATE REQUIREMENTS

A. Nondiscrimination

The following conditions are applicable:

(1) State Law

Pursuant to Indiana Code 22-9-1-10 and the Governor's Code of Fair Practice of Kentucky, The METRO GOVERNMENT and its subcontractors, if any, shall not discriminate against any employee or applicant for employment, to be employed in the performance of work under this Agreement with respect to hire, tenure, terms, conditions or privileges of employment or any matter directly or indirectly related to employment, because of race, color, religion, sex, disability, national origin, age or ancestry. Breach of this covenant may be regarded as a

material breach of the contract. Pursuant to State law, the METRO GOVERNMENT agrees as follows:

- a) The METRO GOVERNMENT will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex or age (40 or older). The METRO GOVERNMENT 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, ancestry, sex, age (40 or older), 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 METRO GOVERNMENT agrees to post in a conspicuous place, available to employees and applicants for employment, notices setting forth the provisions of this nondiscrimination clause.
- b) The METRO GOVERNMENT will, in all solicitations or advertisements for employees placed by or on behalf of the METRO GOVERNMENT, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, ancestry, sex, age (40 or older), or disability.
- c) The METRO GOVERNMENT 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 METRO GOVERNMENT's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The METRO GOVERNMENT 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.

(2) Federal Law

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

- a) **Compliance with Regulations:** TARC will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration (FHWA) and Federal Transit Administration (FTA), as they may be amended from time to time, which are herein incorporated by reference and made part of this contract.

- b) **Non-discrimination:** TARC, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or nation origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Consultant will not participate directly or indirectly in the discrimination prohibited by the Acts and Regulations, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR 21.
- c) **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations, either by competitive bidding, or negotiation made by TARC for work to be performed under a subcontract, including procurement of materials, or leases of equipment, each potential subcontractor or supplier will be notified by TARC of their obligations under this contract and the Acts and Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
- d) **Information and Reports:** TARC will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by KIPDA, by FHWA, or by FTA to be pertinent to ascertain compliance with such Acts, Regulations, and instructions. Where any information required of TARC is in the exclusive possession of another who fails or refuses to furnish the information, TARC will so certify to KIPDA, to FHWA, or to FTA, as appropriate, and will set forth what efforts it has made to obtain the information.
- e) **Sanctions for Noncompliance:** In the event of TARC's noncompliance with the Non-discrimination provisions of this contract, KIPDA will impose such contract sanctions as it or FHWA, or FTA may determine to be appropriate, including, but not limited to:
- 1) withholding payments to TARC under the contract until TARC complies; and/or
 - 2) cancellation, termination, or suspension of the contract, in whole or in part.
- f) **Incorporation of Provisions:** TARC will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. TARC will take action with respect to any subcontract or procurement as KIPDA, FHWA, or FTA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if TARC becomes involved in, or is threatened with litigation by a subcontractor, or supplier because of such direction, TARC may request KIPDA to enter into any litigation to protect the

interests of KIPDA. In addition, TARC may request the United States to enter into the litigation to protect the interests of the United States.

- (3) During the performance of this contract, TARC, for itself, its assignees, and successors in interest agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage, and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs and activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 USC §§ 12131-12189) as implemented by Department of Transportation regulations at 49 CFR parts 37 and 38;
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English

proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);

- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C 1681 *et seq.*)

B. Disadvantaged Business Enterprises

- (1) It is the policy of KIPDA and the U.S. Department of Transportation that disadvantaged business enterprises as defined in 49 CFR Part 23 shall have the maximum opportunity to participate in the performance of contracts or subcontracts financed in whole or in part with Federal funds under this Agreement. Consequently, the Disadvantaged Business Enterprise (DBE) requirements of 49 CFR Part 23 apply to this agreement.
- (2) The METRO GOVERNMENT or its subcontractor agrees to ensure that disadvantaged business enterprises as defined in 49 CFR Part 23 have the maximum opportunity to 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 METRO GOVERNMENT or its subcontractor shall take all necessary and reasonable steps in accordance with 49 CFR Part 23 to ensure that disadvantaged business enterprises have the maximum opportunity to compete for and perform contracts. The METRO GOVERNMENT and its subcontractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of U.S.D.O.T. assisted contracts.
- (3) The METRO GOVERNMENT agrees to document the steps it has taken to obtain disadvantaged business enterprise participation, including, but not limited to, efforts to contract or negotiate with disadvantaged business enterprises for specific work. Such documentation shall include at a minimum the names, addresses, and telephone numbers of disadvantaged business enterprises that were contacted; and a description of the information provided to disadvantaged business enterprises regarding the type of work to be performed.
- (4) If as a condition of assistance the METRO GOVERNMENT has submitted and KIPDA and the State have approved a disadvantaged business enterprise affirmative action program which the METRO GOVERNMENT agrees to carry out, this program is incorporated in this 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 Agreement. Upon notification to the METRO GOVERNMENT of its failure to carry out the approved program, KIPDA shall impose such sanctions as noted in 49 CFR Part 23, Subpart E, which sanctions may include termination of the Agreement or other measures that may affect the ability of the METRO GOVERNMENT to obtain future Federal funding.

C. Nondiscrimination Pertaining to Persons with Disabilities

The METRO GOVERNMENT agrees to comply with the provisions of Section 504 of the Rehabilitation Act of 1973, PL-93-112, and with all applicable requirements under the Americans with Disabilities Act of 1990, PL-101-336, and applicable federal regulations (49 CFR Parts 27, 37 and 38 and 29 CFR Part 1630).

D. Competition in Procurement

The METRO GOVERNMENT shall comply with the Procurement Standards requirements set forth in OMB circulars applicable to the METRO GOVERNMENT, as amended and all revisions thereof, as may be appropriate; and all established procedures of KIPDA. KIPDA reserves the right to review the METRO GOVERNMENT's technical specifications and requirements, where such review is necessary for proper project administration. The METRO GOVERNMENT further agrees that no Federal funds shall be used to support procurement utilizing exclusionary or discriminatory specifications.

E. Buy America

All procurement and construction contracts under this Agreement must comply with Section 165 of the Surface Transportation Assistance Act of 1982, PL 97-424, 49 USC 1601, and U.S.D.O.T. regulations and guidance issues to implement this statutory provision.

F. Energy Conservation

During the performance of this Agreement, the METRO GOVERNMENT shall comply with all applicable mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plan issued in compliance with the Energy Policy and Conservation Act (PL 94-163).

G. Privacy Act

The METRO GOVERNMENT shall comply with the Privacy Act of 1974 (5 USC Section 552a) and the rules and regulations issued pursuant to the Act when the performance of this Agreement involves activities associated with maintaining a system or records on individuals to be operated by the METRO GOVERNMENT, its subcontractors or employees to accomplish a Government function. The METRO GOVERNMENT shall include this Privacy Act notification in every approved subcontract for the same purpose.

H. Prohibited Interests

- (1) No officer, member or employees of KIPDA, INDOT , KYTC, and no member of the KIPDA Board or the State governing body, and no other public official of the governing body of the State in which the project is situated or being carried out who exercises any functions or responsibilities in the review

or approval of the undertaking or carrying out of this project shall participate in any decision relating to this Agreement which affects his personal interest or have any personal or pecuniary interest, direct or indirect, in this Agreement or the proceeds thereof during his tenure or for one year thereafter.

- (2) 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 therefrom.

I. Restrictions on Lobbying

The METRO GOVERNMENT hereby certifies that it has complied with 31 USC 1352, regarding the use of federal funds for lobbying purposes, including the completion of a disclosure form, if necessary.

J. Compliance With Environmental Standards

The METRO GOVERNMENT shall comply with all applicable standards, orders, or requirements issued under Sections 114 and 306 of the Clean Air Act 49 USC 1857 (h), Sections 308 and 508 of the Clean Water Act 33 USC 1368, Executive Order 11738, and Environmental Protection Agency regulations 40 CFR Part 15, which prohibit the use under non-exempt Federal contracts, grants or loans of facilities included on the EPA List of Violating Facilities. The METRO GOVERNMENT shall notify KIPDA of the receipt of any communication from EPA indicating that a facility to be utilized in the Project is under consideration for listing by EPA.

K. Drug-Free Workplace

- (1) The METRO GOVERNMENT hereby covenants and agrees to make a good faith effort to provide and maintain during the term of this Agreement a drug-free workplace, and that it will give written notice to KIPDA within eight (8) days after receiving actual notice that an employee of the METRO GOVERNMENT has been convicted of a criminal drug violation occurring in the METRO GOVERNMENT's workplace.
- (2) In addition to the provisions of subparagraph (1) above, if the total contract amount set forth in this Agreement is in excess of \$25,000, the METRO GOVERNMENT hereby further agrees that this Agreement is expressly subject to the terms, conditions and representations contained in the Drug-Free Workplace certification executed by the METRO GOVERNMENT in conjunction with this Agreement.
- (2) It is further expressly agreed that the failure of the METRO GOVERNMENT to in good faith comply with the terms of subparagraph (1) above, or falsifying or otherwise violating the terms of the certification referenced in subparagraph (2) above shall constitute a material breach of this Agreement, and shall entitle KIPDA to impose sanctions against the METRO GOVERNMENT including, but not limited to, suspension of

contract payments, termination of this Agreement and/or debarment of the METRO GOVERNMENT from doing further business with KIPDA for up to four (4) years.

L. Campaign Finance

If applicable, the METRO GOVERNMENT swears under the penalty of perjury, as provided by KRS 523.020, that neither he/she nor the entity that 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 he/she represents will not violate any provisions of the campaign finance laws of the Commonwealth.

M. Violations

If applicable, pursuant to KRS 45A.485, the METRO GOVERNMENT shall reveal to KIPDA any final determination of a violation within the last five (5) year period pursuant to KRS Chapters 136, 139, 141, 337, 338, 341, and 342. These statutes relate to the corporate and utility tax, state sales and use tax, income tax, wages and hours laws, occupational safety and health law, unemployment compensation law, and workers compensation insurance law, respectively.

The METRO GOVERNMENT agrees to be in compliance with the provisions of KRS Chapters 136, 139, 141, 337, 338, 341, and 342 for the duration of the Agreement. Failure to reveal a final determination of a violation of the referenced statutes or to comply with these statutes for the duration of the Agreement shall be grounds for the cancellation of the Agreement and disqualification of the METRO GOVERNMENT from eligibility for future KIPDA contracts for a period of two (2) years.

N. Employment

During the period of this Agreement, the METRO GOVERNMENT shall not engage on full or part time or other basis, any Indiana Department of Transportation personnel who remain in the employ of the Indiana Department of Transportation.

SECTION 9 MISCELLANEOUS

A. Bonus or Commission

The METRO GOVERNMENT warrants that it has not paid, and also agrees not to pay, any bonus or commission for the purpose of obtaining an approval by KIPDA which may be necessary in connection with carrying out this Agreement.

B. Covenant Against Contingent Fees

The METRO GOVERNMENT warrants that no person or selling agency 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, KIPDA shall have the right to annul this Agreement without liability or at its discretion, to deduct from the compensation to be paid under this Agreement, or otherwise recover, the full amount of such commission, percentage, brokerage or contingent fee.

C. Successors and Assigns

KIPDA and the METRO GOVERNMENT each binds itself, its partners, successors, executors, administrators, and assigns to the other party to this Agreement, and to the partners, successors, executors, administrators, and assigns of such other party in respect to all promises of this Agreement.

D. Severability

If any part or provision of this Agreement is held invalid, the validity of the remaining provisions shall not be affected, and the rights and obligations of the parties shall be construed and enforced as if the Agreement did not contain the particular part or provision held to be invalid.

E. Funding Cancellation

If the U.S.D.O.T., INDOT, or KYTC makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Agreement, the Agreement shall be canceled. A determination by the U.S.D.O.T., INDOT, or the KYTC that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.

F. Patent Rights and Copyrights

(1) No invention conceived or first actually reduced to practice in the course or under this Agreement by the METRO GOVERNMENT or any subcontractor which is or may be patentable under the patent laws of the United States of America or any foreign country may be patented without the written authorization of the U.S.D.O.T. The METRO GOVERNMENT shall include a similar clause in all of its subcontracts. All disputes arising out of patent rights shall be governed by the rules and regulations pertaining to patents as issued by the U.S.D.O.T.

(2) The METRO GOVERNMENT shall be free to copyright material developed under this Agreement with the provisions that KIPDA, the INDOT, KYTC and the U.S.D.O.T. reserve a royalty-free, non-exclusive, and irrevocable license to reproduce, publish or otherwise use, and authorize others to use the work for government purposes.

G. Ownership of Documents

(1) All documents, including tracings, drawings, reports, data, and records, as instruments of service, are to be the joint property of the INDOT, KYTC, KIPDA and the METRO GOVERNMENT. During the performance of the

services provided herein, the METRO GOVERNMENT shall be responsible for any loss or damage to the documents, herein enumerated.

- (2) Pursuant to Section 8136 of the Department of Defense Appropriations Act for fiscal year 1989, the METRO GOVERNMENT shall clearly set forth in any statement, press release, request for proposal, bid solicitation or other document describing projects or programs funded in whole or in part with U.S.D.O.T. funding information concerning the use of those U.S.D.O.T. funds. All reports published by the METRO GOVERNMENT shall contain the following credit reference:

Preparation of this report has been financed by the Federal Transit Administration, the Federal Highway Administration, the Kentucky Transportation Cabinet and local governments in the KIPDA region, in cooperation with the Indiana Department of Transportation. This financial assistance notwithstanding, the contents of this report do not necessarily reflect the official views or policies of the funding agencies. Accuracy of the information presented herein is the responsibility of Louisville-Jefferson County Metro Government.

**PART III
PROJECT BUDGET AND PAYMENT**

SECTION 1

In no event shall the maximum liability of KIPDA under this contract exceed \$130,000.

SECTION 2

Payments will be based on measurable work products reviewed and accepted by KIPDA. Appropriate and sufficient documentation as described elsewhere in this contract will be required prior to release of payments by KIPDA.

SECTION 3

The METRO GOVERNMENT shall submit periodic invoices in a form acceptable to KIPDA. Invoices may be presented at any time during the contract period, but no more than one invoice will be accepted per month. The invoice will include a narrative progress report detailing the work that was completed during the period being billed, and must be signed by the person who signed this contract, or their designee. A final invoice must be submitted to KIPDA within 25 days of the contract completion date.

SECTION 4

The payment of an invoice by KIPDA shall not prejudice KIPDA's right to object or question any invoice or matter in relation thereto. Such payment by KIPDA shall neither be construed as acceptance or any part of the work or service provided, nor as an approval of any costs invoiced therein.

SECTION 5

KIPDA reserves the right to deduct from amounts which are or shall become due and payable to the METRO GOVERNMENT under this or any contract between the parties any amounts which are or shall become due and payable to KIPDA by the METRO GOVERNMENT.

SECTION 6

Persons authorized to obligate KIPDA under this Agreement or to modify this Agreement are Jack Couch, Executive Director, and Thomas W. Pope, Assistant Director.

**PART IV
SCOPE OF WORK**

KIPDA agrees to pay to the METRO GOVERNMENT allowable costs incurred during the contract period in an amount not to exceed \$130,000 for the specific services described below.

- A. METRO GOVERNMENT will conduct traffic volume counts and speed studies and submit results to KIPDA on a monthly basis as follows:
- (1) A total of 35 (48-hour) traffic volume/speed counts on the KIPDA travel model highway network, not exceeding \$12,250 (Unit cost - \$350). A list of suggested locations is attached.
 - (2) A total of 160 (12-hour) turning movement counts, not exceeding \$91,040 (Unit cost - \$569). A list of suggested locations is attached.
 - (3) A total of 30 (12-hour) pedestrian counts in the Downtown (CBD), not exceeding \$8,640 (Unit cost - \$288).
 - (4) A total of 4 (24-hour) turning movement counts, not exceeding \$3,096 (Unit cost - \$774). A list of suggested locations is attached.
 - (5) A total of 10 (12-hour) turning movement counts collected by Metro and processed by third party contract, not exceeding \$2,750 (Unit Cost - \$275).
 - (6) A total of 2 (12-hour) turning movement counts (including right-turn on red), not exceeding \$6,290 (Unit cost - \$1,258).
 - (7) A total of 1 (24-hour) turning movement counts (including right-turn on red), not exceeding \$894 (Unit cost - \$894).
 - (8) Unit Costs include all labor, administrative costs, equipment and to update computerized traffic counts, travel time, stop/delay, and spot speed studies. The cost of this effort is incidental to the above listed work items.
- B. METRO GOVERNMENT will maintain the current traffic count equipment and continue to update computerized traffic counts, travel time, stop/delay, and spot speed studies. In order to maintain the system and provide counts, additional and upgraded equipment and software may be purchased, totaling not more than \$10,072.
- C. Metro GOVERNMENT will provide spreadsheets in Excel format for data (per calendar year) on vehicular, pedestrian, and bicycle volumes and accidents. METRO GOVERNMENT will also provide ArcGIS shapefiles for use in the graphic display of this information. The cost of this effort is incidental to the above listed work items.

Potential 48-hour Traffic Volume/Speed Counts

- 7th Street (between Market and Main Streets)
- Brook Street. (between Oak and Kentucky Streets)
- 15th Street (between Muhammad Ali Boulevard and Market Street)
- 16th Street (between Muhammad Ali Boulevard and Broadway)
- Arthur Street (between Gaulbert Sreet. and Brandeis Avenue)
- Brandeis Avenue (between Bradley Avenue and Preston Street)
- Portland Avenue (between 26th and 33rd Streets)
- Preston Street (between Main and Jefferson Streets)
- Taylorsville Road (between Hikes/Browns and McMahan Boulevard)
- 7th Street Road (between Wathen Lane and Algonquin Parkway)
- 2nd Street (between Kentucky and York Streets)
- 3rd Street (between York and Kentucky Streets)
- 4th Street (between Liberty and Main Streets)
- 6th Street (between Zane and Oak Streets)
- Brook Street (between Main and Witherspoon Streets)
- 13th Street (between Jefferson & Main Streets)
- 18th Street (between Algonquin Parkway & Hill Street)
- 21st Street (between Dumesnil and Kentucky Streets)
- Broadway (between Shelby Street and Barret Avenue)
- Clay Street (between Oak and Kentucky Streets)
- Jefferson Street (between 21st and 22nd Streets)
- Lynn Street (between Shelby and Preston Streets)
- Main Street (between 21st and 22nd Streets)
- Shelby Street (between Jefferson Street and Muhammad Ali Boulevard)
- Southside Drive (between Steedly Drive and Southland Boulevard)

Potential Turning Movement Locations

- Zorn Avenue & River Road.
- Brownsboro Road & Chenoweth Lane
- Brownsboro Road & Blankenbaker Lane
- Brownsboro Road & Hurstbourne/Springdale Road
- Billtown Road & Lovers Lane
- Taylorsville Road & S. Pope Lick Road
- Dixie Highway & Greenwood/St. Andrews Church Road
- Dixie Highway & Rockford Lane
- St. Andrews Church Road & Palatka Road
- Witherspoon & Bingham Way
- Main Street & Floyd Street
- Main Street & Campbell Street
- Main Street & Clay Street
- 6th Street & Main Street
- 5th Street & Market Street
- 8th Street & Market Street
- 8th Street & Broadway
- Brook Street & Broadway
- 16th Street & Market Street
- 22nd Street & Market Street
- 6th Street & Hill Street
- Dixie Highway & Bernheim Lane
- Bardstown Road & Hurstbourne Lane
- Bardstown Road & Thixton Lane
- Bardstown Road Waterford Road
- 22nd Street & Dumesnil Street
- 34th Street/Coleman & Southern Avenue
- Newburg Road & Gardiner Lane
- Chestnut Connector/S. Campbell & Gray Street
- 2nd Street & Muhammad Ali
- Shelbyville Road & Ten Pin* Lane (plus tube count(s) on entrance/exit to Best Buy)
- Shelbyville Road & New LaGrange Road (24-Hour Count)
- Hurstbourne Lane & Watterson Trail
- Lexington Road & Frankfort Avenue
- Shelbyville Road & Oxmoor Lane
- KY 22 & Norton Healthcare/I-265 NB Off Ramp
- 3rd Street & Woodlawn Avenue
- Westport Road & Hubbards Lane
- US 42 & KY 329
- Poplar Level Road & Trevilian Way
- Poplar Level Road and Hess Lane