

PUBLIC PRIVATE PARTNERSHIP AGREEMENT

THIS PUBLIC PRIVATE PARTNERSHIP AGREEMENT ("Agreement") is made and entered into as of April 15, 2015 (the "Effective Date"), by and between **KENTUCKIANA CLEANFUEL, LLC**, a Kentucky limited liability company ("KCF"), **KCF STATION 1, LLC**, a Kentucky limited liability company ("Station 1", and together with KCF, "Grantee") and the **LOUISVILLE/JEFFERSON COUNTY METRO GOVERNMENT** ("Sponsor").

RECITALS:

A. Sponsor, through the Office of Sustainability, and KCF submitted in the fall of 2013 an application (the "Application") as a public-private partnership to receive funds under the Congestion Mitigation Air Quality Program ("CMAQ") of the Federal Highway Administration ("FHWA") and administered in Kentucky by the Office of Local Programs ("OLP") of the Kentucky Transportation Cabinet.

B. The Application requested funds for the construction of three compressed natural gas ("CNG") fueling stations, including equipment specifically noted in the Application ("Projects").

C. On August 7, 2014, Governor Beshear announced that KCF and Sponsor received a CMAQ award in the amount of \$2.32 million for the construction of the three CNG fueling stations described in the Application (the "Award").

D. KCF formed Station 1 for the development of the station on Geil Lane, and currently owns an interest in Station 1. Station 1 will be incurring the costs of the construction for such project and as a result is also executing this Agreement.

E. This Agreement is a condition precedent to the execution of a Memorandum of Agreement between Sponsor and OLP, or its designee, which is also a condition precedent to finalizing the CMAQ grant process with the FHWA.

AGREEMENT:

NOW, THEREFORE, Sponsor and Grantee hereby agree as follows:

1. TERM. The term ("Term") of this Agreement shall commence on the Effective Date and continue until the all of the Award has been distributed to Grantee. After expiration of the Term, neither party shall have any obligation to the other under this Agreement except as specifically set forth in this Agreement.

2. OBLIGATIONS OF SPONSOR.

2.1 Grant. Sponsor shall coordinate with OLP, FHWA and Grantee as required to facilitate administration of the Award to Grantee in a prompt and timely manner. This coordination may include, but not be limited to, any of the following tasks and duties as required:

(a) Obtaining any necessary approvals of Louisville Metro Council of this Agreement or other items for which approval is required;

(b) Working with the Kentuckiana Regional Planning and Development Agency ("KIPDA") to have the projects described in the Application included in its Transportation Improvement Plan;

(c) Monitoring compliance with the CMAQ program rules, including procurement in accordance with federal requirements and performance by the Grantee of ongoing obligations to maintain equipment purchased or improved with CMAQ funds in active use; and

(d) Assisting OLP in various other administrative tasks which may be required by the CMAQ program.

2.2 Site Selection; Allocation of Award.

(a) Sponsor acknowledges and agrees that Grantee, in its sole discretion, shall be permitted to select any location in Jefferson County, Kentucky for development of each of the three CNG fueling stations for which the Award is available.

(b) To the extent the Award has not previously been disbursed, Sponsor acknowledges and agrees that Grantee shall not be limited in the amount of the Award that may be used for any one of the CNG fueling stations permitted for funding under the Award.

2.3 Distribution of Funds. Grantee acknowledges that the amount of the Award will be disbursed by Sponsor to Grantee on a reimbursement basis. After expending its own funds on the Projects, Grantee shall thereafter submit a request for reimbursement to Sponsor. Grantee shall submit a request for reimbursement (each a "Request") no more frequently than monthly via an invoice containing sufficient detail to allow Sponsor to determine whether the requested reimbursement is for eligible expenses as determined by the requirements of the CMAQ Program. Unless Sponsor rejects the requested reimbursement for eligible expenses incurred by Grantee within 30 days after receipt of the Request, Sponsor shall submit payment of the invoiced amount to Grantee within 45 days after Sponsor's receipt of the Request. Grantee acknowledges that Sponsor shall pay Grantee's reimbursable expenses from Sponsor's own funds and thereafter request reimbursement from OLP. In the event OLP refuses to reimburse Sponsor for an amount paid by Sponsor to Grantee, Grantee agrees to return the amount of that reimbursement paid by Sponsor to Grantee within thirty (30) days after Sponsor delivers to Grantee written notice of such refusal to reimburse. . The total amount paid to Grantee under this Agreement net of any amounts returned to Sponsor under this Section 2.3 shall not exceed **TWO MILLION THREE HUNDRED TWENTY THOUSAND DOLLARS (\$2,320,000.00).**

3. OBLIGATIONS OF GRANTEE.

3.1 Matching Funds. For any funds disbursed in connection with the Award, Grantee agrees to incur, and provide documentation for, the expenses necessary to satisfy the 20% matching funds requirement under the CMAQ program.

3.2 Compliance with Program Requirements. Grantee shall materially comply with all legal requirements of the CMAQ program and shall not request reimbursement of any ineligible expenses under same. Grantee shall cooperate with any reasonable requests of Sponsor related to compliance with CMAQ program requirements. Grantee agrees that the following are events of default under this Agreement:

- (a) Falsification by Grantee of requests for reimbursement; or
- (b) Failure to use goods procured with funding provided under this Agreement for the Projects.

If an event of default of Grantee occurs under this Agreement that is not cured within 30 days after Sponsor delivers to Grantee notice of such failure, Grantee agrees that Sponsor may immediately terminate this Agreement upon written notice to Grantee, and Sponsor shall have no further obligation to reimburse Grantee in connection with the Awards. If Sponsor is required to repay any portion of the Award because of a material breach of this Agreement by Grantee, it shall notify Grantee in writing of that demand for repayment and Grantee shall, thirty days from the date Grantee receives Sponsor's notice, remit payment for that portion of the Award to Sponsor and Sponsor shall, as soon as reasonably practical thereafter, repay that portion of the Award to the funding source.

3.3 Maintenance. For each piece of equipment for which Grantee receives disbursement of the Award (each, "Funded Equipment"), Grantee shall maintain that piece of Funded Equipment in good working condition and repair, normal wear and tear excepted. If Sponsor receives notice from OLP or FHWA that any piece of Funded Equipment is not being maintained in accordance with the rules and regulations of the CMAQ program, Sponsor shall provide Grantee notice of such failure and Grantee shall have 90 days to cure any maintenance defects. Sponsor and Grantee shall each use its commercially reasonable efforts to take such action to avoid FHWA requiring some portion, or all, of the Award to be returned to FHWA, including allowing Grantee to participate in all correspondence between Sponsor and either OLP or FHWA related to such maintenance failure.

3.4 Joinder. If KCF decides to develop any CNG fueling station for which it will seek reimbursement from the Award through an affiliated company, KCF shall cause such affiliated company to execute a joinder to this Agreement that requires such company to comply with the terms of this Agreement.

3.5 Successors. Grantee shall cause any purchaser of the equipment, facilities or other items purchased or constructed with proceeds from the Award to assume the obligations of this Agreement.

3.6 Record Keeping and Audit Requirements. Grantee agrees to maintain, during the term of this Agreement, and retain not less than five years after completion thereof, complete and accurate records of all the Grantee's costs which are chargeable to Sponsor under this Agreement as well as all other funding sources for the Projects; and Sponsor, the Commonwealth of Kentucky and the United States Department of Transportation shall have the right, at any reasonable time, to inspect and audit those records by authorized representatives of

their own, the Kentucky Auditor of Public Accounts or any public accounting firm selected by them. The records thus to be maintained and retained by the Grantee shall include (without limitation): (a) all payroll records accounting for total time distribution of Grantee's employees working full or part time on the Projects (to permit tracing to payrolls and related tax returns) or those individuals contracted to provide services, as well as cancelled payroll checks, or signed receipts for payroll payments in cash; (b) invoices for purchases, receiving and issuing documents, and all the inventory records for Grantee's stores, stock or capital items; and (c) paid invoices and cancelled checks for materials purchased and for subcontractors; and (d) any other third party charges. In addition, Grantee will retain all records pertinent to this Projects pertaining to statistical records and supporting documents for the same period of time.

4. MISCELLANEOUS

4.1 Amendment. This Agreement may only be modified or amended by a writing signed by each of the parties hereto.

4.2 Severability. If any provision of this Agreement shall be invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

4.3 Captions; Section References. Section titles or captions contained in this Agreement are inserted only as a matter of convenience and reference and in no way define, limit, extend or describe the scope of this Agreement, or the intent of any provision hereof. All references to Sections herein shall refer to Sections of this Agreement unless the context requires otherwise.

4.4 Binding Agreement. Except as otherwise provided in this Agreement, this Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective executors, administrators, heirs, successors and assigns.

4.5 Entire Agreement. This Agreement contains the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all understandings, both oral and written, respecting the subject matter hereof.

4.6 Governing Law. This Agreement shall be governed by, and construed in Accordance with, the laws of the Commonwealth of Kentucky without regard to its conflict of laws rules.

4.7 Construction. The parties have participated jointly in the negotiation and drafting of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

4.8 Non-Appropriation. This Agreement is contingent upon the continued availability of appropriated funding. If the funding appropriated for the Projects becomes unavailable for any reason including: the Kentucky General Assembly's or the Louisville Metro Council's failure to appropriate the funding by operation of law or as the result of a reduction in

federal funding, further reimbursement of expenditures for the Projects may be denied, this Agreement may be cancelled, its duration extended or its scope amended by Sponsor in whole or in part without penalty. Denial of further reimbursement, cancellation of this Agreement, extension or amendment because of an interruption in the appropriated funding is not a default or breach of this Agreement by Sponsor nor may such denial, cancellation , extension or amendment give rise to any claim against Sponsor.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the date first written above.

KENTUCKIANA CLEANFUEL, LLC

By: Alan Steiden
Alan Steiden, Member

KCF STATION 1, LLC

By: Kentuckiana Cleanfuel, LLC, an
authorized member

By: Alan Steiden
Alan Steiden, Member

**LOUISVILLE/JEFFERSON COUNTY METRO
GOVERNMENT**

By: Ellen M. Heser
Name: Ellen M. Heser
Title: Chief of Staff