STEVEN L. BESHEAR
GOVERNOR

EXECUTIVE ORDER

2009-698
July 23, 2009

Secretary of State
Frankfort
Kentucky

By virtue of the authority vested in me by Section 12.210(1) of Kentucky Revised Statutes and as Governor of the Commonwealth of Kentucky, I, Steven L. Beshear, do hereby approve an employment contract between **Fulkerson & Kinkel, PLLC,** Lexington, Kentucky and the **Transportation Cabinet** as outlined in the attached contract.

Please enter this Executive Order upon the Executive Journal and file the attached Contract with the Executive Order.

STEVEN L. BESHEAR
Governor

TREY GRAYSON
Secretary of State

RECEIVED AND FILED

DATE 7/27/09

TREY GRAYSON
SECRETARY OF STATE
COMMONWEALTH OF KENTUCKY

BY R. Adler

Commonwealth of Kentucky

CONTRACT

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

Doc Description: Personal Service Attorney Contract	
Doc ID No: PON2 605 0900012532 1	**Procurement Folder:** 1379212
Procurement Type: Personal Service Contract	
Administered By: Rebecca Goodman	**Cited Authority:** FAP111-43-00-L
Telephone: 502-564-7650	**Issued By:** Earl Gresham

CONTRACTOR

FULKERSON & KINKEL PLLC

239 NORTH BROADWAY

LEXINGTON KY 40507
US

Line	CL Description	Due Date	Quantity	Unit Price	Contract Amount	Total Price
1	Personal Service Attorney Contract		0.00	0.00000	100,000.00	100,000.00

Extended Description

Partners: $125.00 Hourly Rate
Associates: $100.00 Hourly Rate
Paralegals: $40.00 Hourly Rate

BILL TO

426643
KYTC OFFICE OF LEGAL SERVICES
STATION: W6-20-01 200 MERO STREET

FRANKFORT KY 40622
US

426643
KYTC OFFICE OF LEGAL SERVICES
STATION: W6-20-01 200 MERO STREET

FRANKFORT KY 40622
US

Total Order Amount: 100,000.00

PERSONAL SERVICE CONTRACT FOR MISCELLANEOUS LEGAL SERVICES

BETWEEN

THE COMMONWEALTH OF KENTUCKY
KYTC

AND

Fulkerson & Kinkel, PLLC
239 N. Broadway
Lexington, KY 40507
Phone: 859-253-0523
Fax: 859-254-2098
Email: CLewis@FulkersonKinkel.com

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This Personal Service Contract (PSC) is entered into, by and between the Commonwealth of Kentucky, KYTC ("the Commonwealth") and FULKERSON & KINKEL, PLLC to establish a Contract for MISCELLANEOUS LEGAL SERVICES. This PSC is effective 07/27/2009 and expires 06/30/2010.

The Commonwealth and Contractor agree to the following:

I. Scope of Contract

The Transportation Cabinet requests the services of attorneys to represent the Cabinet. The services shall include, but not be limited to:

A. Representation of the Cabinet at all levels of the court system and/or before administrative bodies where the Cabinet may be a party.

B. Providing legal advice and assistance to the Cabinet on all matters within its jurisdiction.

C. Conducting title examinations and preparing title opinions.

D. Condemnation

E. Board of Claims and Workers' Compensation defense.

F. Miscellaneous matters (e.g., collections including delinquent highway use tax, bankruptcy, environmental, utility, contractual, subrogation, Personnel Board, employment and other areas as required).

Applicants must be licensed attorneys and members of the Kentucky Bar Association. Selection will be based on professional qualifications, experience, geographic location, areas and concentration of practice, availability to accept assignments and rates charged for services and expenses.

As used in this document, the term "Attorney" means the attorney or firm of attorneys with whom the Cabinet may enter into a personal service contract. For purposes of the following requirements, the term "bidder" refers to "Attorney."

The Cabinet is now engaged in acquiring titles to certain parcels of land in counties throughout the Commonwealth of Kentucky for the improvement and construction of public improvements and roads and therefore desires to have an accurate title examination of each parcel, or interest in land, needed for the construction of public improvements and the improvement and/or construction of roads.

The Cabinet is now engaged in acquiring right of way and other properties in counties throughout the Commonwealth and therefore desires to acquire the service of competent attorneys specifically for the purpose of preparing condemnation actions, commencing actions in Circuit Court and prosecuting them to completion.

The Cabinet carries out its executive branch functions and activities throughout the Commonwealth of Kentucky, and therefore desires to acquire the services of competent attorneys for the purpose of performing a variety of other professional legal services such as, but not limited to, performing legal research, rendering legal opinions, and representing the Cabinet and its employees in various actions before administrative bodies and in litigation before courts.

I. Title Work

(1) The Cabinet agrees to furnish the contract Attorney with the source of title of the

present owners by book and page number, or the best information it can obtain, and to furnish the contract Attorney with a plan sheet accurately showing the portion of the assigned parcel for which the title examination is to be made.

(2) The Attorney agrees to accurately and conscientiously perform the services contracted for herein, to complete the title certification and deliver same to the designated representatives of the Cabinet within the time limits fixed at the time said list of parcels and other information is delivered to the Attorney.

(3) The Attorney agrees to make a complete examination of each title so requested, extending backward from the present time for a period of no less than thirty-five (35) years, and to make a complete certificate as to the status of said title of the present owner as of the date of said examination, same to include any interest in minerals.

(4) In addition to the title examination backward for a period of not less than thirty-five (35) years as described in paragraph (3) above, upon request of the Cabinet, and the showing of the necessity therefore, the Attorney agrees to carry any of the aforesaid title examinations back in time sufficient to determine the present ownership and interest in minerals involved under any such tract.

(5) The Cabinet agrees to consider any branching or dividing of source of title occurring with fifteen (15) years extending backward from the date of the assignment as separate sources of title and to compensate accordingly, but not to exceed two (2) additional sources unless specifically authorized by the Cabinet.

(6) Title Reports:

(a) The Cabinet agrees to pay the Attorney the sum of One Hundred and Seventy Dollars ($170.00) for each title certified, in accordance with paragraph (3).

(b) The Cabinet agrees to pay the Attorney the sum of Five Hundred Dollars ($500.00), plus an hourly rate of Fifty Dollars ($50.00) for the Attorney or Forty Dollars ($40.00) for the Paralegal [Not to exceed a total of Five Hundred Dollars ($500.00) per title].for each mineral title certified, in accordance with paragraph (4).

(c) The Cabinet agrees to pay the sum of Forty Dollars ($40.00) for each title which is assigned to the Attorney to review and bring up to date in order to record the deed to the Cabinet.

(7) In the event the Cabinet terminates and cancels the awarded contract, pursuant to the contract's cancellation terms, the Attorney agrees to deliver to the Cabinet all reports of title examined to the date of said cancellation. The Cabinet agrees to compensate the Attorney per parcel as set forth above for whatever work has actually been done to said date and such payment shall constitute compensation in full.

(8) Subject to the Attorney's right to decline such assignments for any reason whatsoever, the Attorney agrees when called upon under the terms and conditions of an inter-Cabinet agreement between the Cabinet and other Agencies of the government of the Commonwealth of Kentucky to examine such titles as may be assigned to him/her and submit title information, in the form prescribed by said Agencies, and under terms, conditions and compensation agreed to at the time of assignment between the Attorney and said other Agencies or Cabinets.

II. Condemnation

(1) The Attorney shall represent the Cabinet, in actions as assigned by the Cabinet, in accordance with the policies and procedures of the Cabinet. The Attorney shall have responsibility for the litigation from the time the action is assigned to him/her to its completion or until withdrawn by the Cabinet. The Cabinet shall furnish a work file to the Attorney that will contain the necessary information including the approved appraisal of the Cabinet at the time the action is assigned.

(2) Subject to the attorney's right to decline such assignments for any reason whatsoever, the Attorney agrees that when called upon under the terms and conditions of an inter-Cabinet agreement between the Cabinet and other Agencies of the government of the Commonwealth of Kentucky to practice condemnation cases as may be assigned to him/her under the terms, conditions and compensation agreed to at the time of each assignment.

(3) The Attorney shall be paid for his/her services described in this section [except under sub-paragraph (2) of this section] at the rate set forth in Section III of the awarded contract(s). The Cabinet will make payment for such services, upon the timely submission of a statement from the Attorney and subsequent acceptance thereof by the Cabinet, and upon the completion of the action in the Circuit Court.

(4) With reference to any litigation referred to herein, the Cabinet agrees to provide the location and securing of assistance (when feasible) in the preparation of exhibits, witnesses, photographs, documents and other information for use in the representation

of assigned actions. Additionally, the facilities of the Cabinet shall be made available for the use of the Attorney, and the Attorney shall use such facilities (if feasible) in order to avoid incurring expenses from outside sources. Where additional assistance for the representation in any action is necessary in the preparation of exhibits, obtaining photographs, hiring expert witnesses, or obtaining documents or information which cannot be supplied by the Cabinet, the Attorney shall request and receive approval of the Cabinet prior to incurring any expenses from outside sources.

(5) The Attorney agrees that any and all information obtained by the Attorney in connection with the preparation of condemnation litigation is the property of the Cabinet, and will not be divulged or used in any manner except by the specific written direction of the Cabinet.

(6) The Cabinet shall make payment for approved services from outside sources upon submission of a statement which has been approved for payment by the Attorney. All such statements shall be identified by the style of action, project parcel, civil action numbers, and the name of the designated Highway District Office overseeing the proposed project.

(7) The Cabinet will provide a response (in writing except where such is not feasible) to proposed terms of settlement or agreed final disposition of any litigation and, except as hereinafter set forth, the Attorney shall make no agreement or commitment in connection with the final disposition of any action without prior written approval. Verbal approval given by the Cabinet shall be immediately confirmed by written recommendation of the Attorney in accordance with the Cabinet's policy and procedure (which shall be provided by the Cabinet upon request).

(8) The Cabinet shall direct the Attorney to appeal or not to appeal any appealable order entered by a court. The Attorney agrees to perfect an appeal or defend an appeal when so directed. This service shall include all necessary steps, including, but not limited to, review of records and transcripts, research of case law, preparation of an appellate brief and necessary reply briefs and oral arguments. Each appeal to a successive level of the court system shall be considered by the Cabinet as a separate appeal.

(9) The Cabinet shall make direct payment for costs incurred in an appeal, i.e., transcripts of record. Reproduction or printing of briefs will be performed by the Cabinet or paid directly by the Cabinet. Request for approval of all outside costs to be incurred in an appeal shall be conducted as set forth in paragraph (4) above.

III. Miscellaneous Legal Services

(1) Upon assignment by the Cabinet, and subject to the Attorney's rights to decline any such assignment for any reason whatsoever, the Attorney shall perform such legal services as requested by the Cabinet, including, but not limited to, performing legal research, rendering legal opinions, and representing the Cabinet and its employees in litigation before the courts, actions before boards and actions before administrative bodies until the matter is completed, concluded or withdrawn.

(2) The Attorney agrees to accept assignments by the Cabinet (with the same rights of rejection as set forth in (1)) for and on behalf of other Agencies of the government of the Commonwealth of Kentucky under the terms and conditions of an inter-Cabinet agreement between the Cabinet and other Agencies and compensation to the Attorney shall be made under Section III of this agreement unless otherwise specified at the time of assignment.

(3) Whenever feasible, the Cabinet agrees to prepare exhibits, provide witnesses, photographs, documents and information for use in representation of assigned actions. Additionally, the facilities of the Cabinet shall be made available for use of the Attorney, if feasible, in order to avoid incurring expenses from outside sources. Where additional assistance for the representation in any action is necessary in the preparation of exhibits, obtaining photographs, hiring expert witnesses, or obtaining documents or information and said assistance cannot be supplied by the Cabinet, the Attorney shall request approval of the Cabinet prior to incurring any expenses from outside sources. The Attorney agrees that any and all information obtained by the Attorney in connection with the preparation of litigation is the property of the Cabinet, and will not be divulged or used in any manner except by the specific written direction of the Cabinet.

(4) The Cabinet shall make direct payment for approved services from outside sources, upon submission of a statement, which has been approved for payment by the Attorney. All such statements shall be identified by the style of the action, the civil action number and the name of the responsible staff attorney in the Cabinet's Office of Legal Services.

(5) Except as hereinafter set forth, the Cabinet shall first give a written response to a proposed settlement or agreed final disposition of any litigation and the Attorney shall make no agreement or commitment in connection with the final disposition of any action without said prior written approval. If verbal approval is given by the Cabinet, said

approval shall be immediately confirmed by written recommendation of the Attorney in accordance with the Cabinet's policies and procedures (which shall be provided by the Cabinet upon request).

(6) The Cabinet agrees to pay the Attorney for services on any cases or matters assigned under Section III of this contract on a "rate per hour" basis, not to exceed $125.00 per hour for Partner and $100.00 per hour for Associate. Charges for clerical, secretarial and other support staff shall not be paid. The Attorney agrees to bill in increments of one-tenths of an hour. Paralegal fees will be paid for authorized services only and at an hourly rate not to exceed $40.00 per hour. Specific rates for requested services will be established at the time of assignment.

(7) Reimbursable expenses shall also be paid and requests for payment of such expenses shall be made on the monthly billing statement described in paragraph (9), below. "Reimbursable expenses" shall mean those out-of-pocket expenses incurred in the representation of the Cabinet under Section III of the contract. Such reimbursable expenses shall be limited to long-distance phone calls, computerized legal research, and copies (at $0.10 per page). However, the Attorney shall not conduct any computerized legal research unless it is deemed necessary by the supervising Cabinet attorney. In such cases, the Cabinet will only reimburse the Attorney for charges for research beyond the scope of any "basic" or "flat rate" subscription service the Attorney otherwise incurs as an ongoing cost of doing business or as overhead. The Cabinet must give prior written approval to reimburse for any other expense. The Attorney shall elect whether to receive reimbursement for mileage, or charge on a per hour basis for the time expended while traveling. (See terms of LRC Policy Statement #98-1, attached hereto.) Reimbursement shall be in accordance with the provisions established by the Commonwealth of Kentucky Travel and Expense Regulations. When necessary and with written approval in advance by the Cabinet, overnight lodging, airfare, or other extraordinary expenses shall be paid with proper documentation. Original receipts authenticated by the Attorney shall be required for all out-of-office expenditures of Two Dollars ($2.00) or more.

(8) For all work performed under Section III, bills shall be submitted monthly by the Attorney in a form approved in advance in writing by the Cabinet. Such form shall contain all elements shown on the attached billing example, including the style of the case, the civil action number, the type of case, the name of the supervising Cabinet attorney(s), the Cabinet's file or identifying matter number, the Attorney's file or matter number, the date of each service performed, a description of each service in detail, the initials of the attorney performing each service, the hourly rate charged for that attorney,

the time spent by that attorney on that service (shown in tenths of an hour), the total amount incurred for that service and the total amount due for professional services. Reimbursable expenses shall be listed in detail at the end of each bill with copies of any necessary receipts and approvals attached. Items to be included on bills, such as specific attorneys' hourly rates, may be contained in a summary accompanying the actual bill.

All bills shall be submitted monthly, no later than fifteen days from the date of the last day of each calendar month, and during the fiscal year in which the services were rendered. KRS 45.231(1) states, "Any claim against any agency, department, or budget unit not presented or encumbered for payment within the fiscal year in which the obligation was incurred may, after determination by the secretary of the Finance and Administration Cabinet, be found to be a valid claim against the Commonwealth, and may be authorized for payment out of the appropriation for the prior year claims, provided that the agency, department, or budget unit had an available balance sufficient to pay the obligation at the close of the fiscal year in which the obligation was incurred. All claims authorized to be paid under this section shall be limited to those incurred during the two (2) preceding fiscal years, and the total of such claims paid for any one (1) agency, department, or budget unit shall not exceed the available balance remaining to the credit of such agency, department, or budget unit at the close of the fiscal year in which the obligations were incurred." Thus any claims prior to the preceding two fiscal years must be submitted to and processed through the Kentucky General Assembly.

At such time it becomes necessary to request additional funding of the Attorney's personal service contract, no invoices or work shall be authorized for payment until the increase in funds has been fully approved by the Secretary of Finance has approved said increase. The Cabinet will provide written notification upon the approval of additional funding and the Attorney will be requested to submit invoices at this time.

The Attorney's failure to submit bills within fifteen (15) days of months' end may result in cancellation of the Attorney's contract and in this respect, the Attorney acknowledges the Office of Legal Services' obligation to the Cabinet and the Commonwealth to closely monitor and manage the available funding for outside legal services.

(9) The Cabinet shall direct the Attorney to appeal or not to appeal any appealable order entered by a court. The Attorney agrees to perfect an appeal or defend an appeal when so directed at the fee described in the awarded contract. This service shall include all necessary steps, including, but not limited to, review of record and transcript, research of case law, preparation of appellate brief and necessary reply briefs and oral

arguments.

(10) The Cabinet shall make direct payment for costs incurred in an appeal, i.e., transcripts of record. Reproduction and printing of briefs shall be performed by the Cabinet or paid directly by the Cabinet. Where additional assistance for the representation in any action is necessary in the preparation of exhibits, obtaining photographs, hiring expert witnesses, or obtaining documents or information which cannot be supplied by the Cabinet, the Attorney shall request and receive written approval of the Cabinet prior to incurring any expenses from outside sources. Statements of all outside costs incurred in an appeal shall be reviewed and approved for payment by the Attorney and submitted to the designated supervising or responsible attorney in the Office of Legal Services. Statements shall be identified as to style of action, type of case and civil action number.

IV. General Provisions

In submitting the proposal, the Attorney agrees to the following Provisions which will be part of the Contract when awarded:

(1) The Attorney agrees that, unless and until his/her services are terminated by the Cabinet, he/she will not accept any employment against the Commonwealth of Kentucky in any litigation without prior written approval from the Cabinet.

(2) The Attorney agrees to maintain sufficient records and information to prepare a quarterly status report as to each matter for which the Attorney represents the Cabinet. To avoid unnecessary reports and to facilitate reporting under certain circumstances, the Cabinet will set a reporting schedule for each matter according to practical guidelines based on the type of matter involved. The Attorney shall submit a yearly status report for every matter assigned to him or her, no later than one (1) month beyond the calendar year anniversary of the assignment. Each report shall contain, at a minimum, the following information as to the matter of representation:

(a) Significant deadlines, such as trial dates, deadlines for filing of dispositive motions and discovery cutoffs;

(b) Total amount of fees and expenses billed and paid;

(c) Total amount of fees and expenses not yet billed or paid;

(d) Any change in the Attorney's responsible personnel;

(e) Range of potential monetary exposure for the Cabinet.

In addition to the reports described in this paragraph, the Attorney is expected to communicate regularly with the supervising Cabinet attorneys and otherwise keep the Office of Legal Services apprised of the status of assigned matters.

(3) The Attorney agrees to maintain and submit, on a quarterly basis, a full

disclosure of matters adverse to the Commonwealth presently being handled by the Attorney. This disclosure shall extend to all members of the Attorney's firm as well. Such disclosure shall include the name and style of the case, the agency, and a brief description of the action.

(4) The Attorney agrees to notify the Executive Director of the Office of Legal Services of the Transportation Cabinet in writing of any potential conflict of interest or to request a waiver. All pertinent facts regarding the proposed representation must be contained in the request for a waiver. It is understood that the only valid and legitimate waiver of conflict of interest will be issued by the Executive Director in writing.

(5) It is understood that failure of the Attorney to comply with provisions 3, 4, 5, and 6, as set forth in "IV. General Provisions", shall be grounds for cancellation of the contract and/or disqualification of the Attorney from eligibility for future state contracts.

(6) The Attorney, in the performance of the awarded contract, agrees to comply with the Federal Highway Administration Federal-Aid-Program Manual, Volume 1, Chapter 6, Section 2 and Volume 7, Chapter 2, Section 4, the receipt of copies of which being hereby acknowledged.

(7) Upon request, the Attorney agrees to furnish the Cabinet on-line computer access to those computer records in his/her office which pertain to matters covered under the awarded Agreement(s), including billing information and records.

The Contractor, as defined in KRS 45A.030 (7), agrees that the Transportation Cabinet, the Finance and Administrative 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 contract for the purpose of financial audit or program review. Furthermore, any books, documents, papers, records, or other evidence provided to the Cabinet, the Finance and Administration Cabinet, the Auditor of Public Accounts, or the legislative Research Commission which are directly pertinent to the contract shall be subject to public disclosure regardless of the proprietary nature of the information, unless specific information is identified and exempted and agreed to by the Secretary of the Finance and Administration Cabinet as meeting the provisions of KRS 62.878(1)(c) prior to the execution of the contract. The Secretary of the Finance and Administration Cabinet shall not restrict the public release of any information that would otherwise be subject to public release if a state government agency were providing the service.

(8) The Attorney hereby agrees to participate in all programs and efforts initiated by the Executive Director of the Office of Legal Services for the purpose of communication, case management and coordination of functions between the Attorney, Cabinet Attorneys (including Highway District Attorneys) and other attorneys under personal service contract(s) with the Cabinet. This agreement is subject to reasonable exemptions to such participation necessitated by security, privilege or proprietary

concerns, which exemptions will not be unreasonably granted. The Attorney further agrees to utilize electronic media for filing, communicating and reporting to the extent the same is practical, it being the Cabinet's policy to streamline management of cases and assignments to better represent the interests of all Cabinet agencies and in turn, reduce costs and liabilities to the Commonwealth.

(9) This Agreement shall specially supersede any previous contractual agreement entered into between the parties.

(10) Neither this agreement, the Attorney's rights under this agreement, nor any work to be performed under it, may be assigned, sub-contracted or transferred to or for the benefit of, any other person.

II. Contract Components and Order of Precedence

The Commonwealth's acceptance of the Contractor's offer in response to the Solicitation, indicated by the issuance of a Contract Award shall create a valid Contract between the Parties consisting of the following:

1. Any written Agreement between the Parties;
2. Any Addenda to the Solicitation;
3. The Solicitation and all attachments thereto; including Personal Service Contract Clauses;
4. Any Best and Final Offer;
5. Any clarifications concerning the Contractor's proposal in response to the Solicitation;
6. The Contractor's proposal in response to the Solicitation.

In the event of any conflict between or among the provisions contained in the Contract, the order of precedence shall be as enumerated above.

III. Negotiated Items

Not Applicable.

IV. Pricing

Partners: $125.00 Hourly Rate
Associates: $100.00 Hourly Rate
Paralegals: $40.00 Hourly Rate

This pricing is within acceptable limits set by the Governmental Contract Review Committee Policy 99-1.

V. Personal Service Contract Standard Terms and Conditions

PSC Standard Terms and Conditions

Whereas, the first party, the state agency, has concluded that either state personnel are not available to perform said function, or it would not be feasible to utilize state personnel to perform said function; and

Whereas, the second party, the contractor, is available and qualified to perform such function; and

Whereas, for the abovementioned reasons, the state agency desires to avail itself of the services of the second party;

NOW THEREFORE, the following terms and conditions are applicable to this contract:

Effective Date:
This agreement is 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 Legislative Government Commission Government Contract Review Committee ("LRC").

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.

Renewals:

The Terms and Conditions of the awarded contract may be extended or amended according to the provisions of KRS Chapter 45A. The awarded contract may be renewed at the completion of the initial contract period for two (2) additional one-year periods or one (1) additional biennium upon the mutual agreement of the parties and approval of the Secretary of the Finance and Administration Cabinet or his authorized designee. Renewal shall be subject to prior approval from the Secretary of the Finance and Administration Cabinet or his authorized designee and the LRC Government Contract Review Committee in accordance with KRS 45A.695 and KRS 45A.705, and contingent upon available funding.

LRC Policies:
Pursuant to KRS 45A.725, LRC has established policies which govern rates payable for certain professional services. These are located on the LRC webpage (http://www.lrc.ky.gov/Statcomm/Contracts/homepage.htm) and would impact any contract established under KRS 45A.690 *et seq.*, where applicable.

Choice of Law and Forum:
All questions as to the execution, validity, interpretation, construction and performance of this agreement shall be governed by the laws of the Commonwealth 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 Franklin County Circuit Court of the Commonwealth of Kentucky.

Cancellation:
The state agency shall have the right to terminate and cancel this agreement at any time not to exceed thirty (30) days' written notice served on the contractor by registered or certified mail.

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.

Authorized to do Business in Kentucky:
The contractor affirms that it is properly authorized under the laws of the Commonwealth of Kentucky to conduct business in this state and will remain in good standing to do business in the Commonwealth of Kentucky for the duration of any

contract awarded.

Invoices for fees:
The contractor shall maintain supporting documents to substantiate invoices and shall furnish same if required by state government.

Travel expenses, if authorized:
The contractor shall be paid for no travel expenses unless and except as specifically authorized by the specifications of the contract.

Other expenses, if authorized herein:
The contractor shall be reimbursed for no other expenses of any kind, unless and except as specifically authorized within the specifications of the contract.

If the reimbursement of such expenses is authorized, the reimbursement shall be only on an out-of-pocket basis. Request for payment of same shall be processed upon receipt from the contractor of valid, itemized statements submitted periodically for payment at the time any fees are due. The contractor shall maintain supporting documents that substantiate every claim for expenses and shall furnish same if requested by state government.

- Invoicing for fee: the contractor's fee shall be original invoice(s) and shall be documented by the contractor. The invoice(s) must conform to the method described in the specifications of the contract.
- Invoicing for travel expenses: the contractor must follow instructions described in the specifications of the contract. Either original or certified copies of receipts must be submitted for airline tickets, motel bills, restaurant charges, rental car charges, and any other miscellaneous expenses.
- Invoicing for miscellaneous expenses: the contractor must follow instructions prescribed in the specifications of the contract. Expenses submitted shall be documented by original or certified copies.

Purchasing and specifications:
The contractor certifies that he will not attempt in any manner to influence any specifications to be restrictive in any way or respect nor will he attempt in any way to influence any purchasing of services, commodities or equipment by the Commonwealth of Kentucky. For the purpose of this paragraph and the following paragraph that pertains to conflict-of interest laws and principles, "he" is construed to mean "they" if more than one person is involved and if a firm, partnership, corporation, or other organization is

involved, then "he" is construed to mean any person with an interest therein.

Conflict-of-interest laws and principles:
The contractor certifies that he is legally entitled to enter into this contract with the Commonwealth of Kentucky, and by holding and performing this contract will not be violating either any conflict of interest statute (KRS 45A.330-45A.340, 45A.990, 164.390), or KRS 11A.040 of the executive branch code of ethics, relating to the employment of former public servants.

Campaign finance:
The contractor certifies that neither he/she nor any member of his/her immediate family having an interest of 10% or more in any business entity involved in the performance of this contract, has contributed more than the amount specified in KRS 121.056(2), to the campaign of the gubernatorial candidate elected at the election last preceding the date of this contract. The contractor further swears under the penalty of perjury, as provided by KRS 523.020, that neither he/she nor the company which 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 company which he/she represents will not violate any provisions of the campaign finance laws of the Commonwealth.

Certification:
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. Furthermore, any books, documents, papers, records, or other evidence provided to the contracting agency, the Finance and Administration Cabinet, the Auditor of Public Accounts, or the Legislative Research Commission which are directly pertinent to the contract shall be subject to public disclosure regardless of the proprietary nature of the information, unless specific information is identified and exempted and agreed to by the Secretary of the Finance and Administration Cabinet as meeting the provisions of KRS 61.878(1)(c) prior to the execution of the contract. The Secretary of the Finance and Administration Cabinet shall not restrict the public release of any information which would otherwise be subject to public release if a state government agency was providing the services.

Protest
Pursuant to KRS 45A.285, The Secretary of the Finance and Administration Cabinet, or his designee, shall have authority to determine protests and other controversies of actual or prospective Vendors in connection with the solicitation or selection for award of a Master Agreement or Contract.

Any actual or prospective Vendor, who is aggrieved in connection with the solicitation or selection for award of a Master Agreement or Contract, may file protest with the Secretary of the Finance and Administration Cabinet. **A protest or notice of other controversy must be filed promptly and in any event within two (2) calendar weeks after such aggrieved person knows or should have known of the facts giving rise thereto. All protests or notices of other controversies must be in writing and shall be addressed to:**

Jonathan Miller, Secretary
Commonwealth of Kentucky
Finance and Administration Cabinet
Room 383, New Capitol Annex
702 Capitol Avenue
Frankfort, KY 40601
Phone #: (502) 564-4240
Fax #: (502) 564-6785

The Secretary of Finance and Administration Cabinet shall promptly issue a decision in writing. A copy of that decision shall be mailed or otherwise furnished to the aggrieved party and shall state the reasons for the action taken.

The decision by the Secretary of the Finance and Administration Cabinet shall be final and conclusive.

Social security: (check one)

_____ the parties are cognizant that the state is not liable for social security contributions pursuant to 42 U.S. Code, section 418, relative to the compensation of the second party for this contract.

_____ the parties are cognizant that the state is liable for social security

contributions pursuant to 42 U.S. Code, section 418, relative to the compensation of the second party for this contract.

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 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.

Discrimination:
Discrimination (because of race, religion, color, national origin, sex, age, or disability) 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 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, age or disability. Such action shall include, but not be limited to the following; employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensations; and selection for training, including apprenticeship. The contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

2. The contractor will, in all solicitations or advertisements for employees placed by or on behalf of the contractor, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, sex, 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.

By signing this contract, the parties agree to and accept the terms and conditions detailed above.

1st Party X: _____ Date: _____
Transportation Cabinet Secretary

2nd Party X: _____ Date: _____
Title: _____

Authorized Signatory for the CONTRACTOR

Approval as to form and legality:

_____
KYTC Attorney