

**AGREEMENT  
BETWEEN  
THE INDIANA DEPARTMENT OF TRANSPORTATION AND  
THE KENTUCKY TRANSPORTATION CABINET  
CONCERNING  
RECIPROCITY OF DBE CERTIFICATIONS**

Indiana EDS No. A 249-18 -0N180004

This Agreement ("Agreement") is made and entered into this 1st day of February 2018, ~~2017~~ by and between the State of Indiana, acting by and through the Indiana Department of Transportation ("INDOT"), and the Commonwealth of Kentucky, acting by and through the Kentucky Transportation Cabinet ("KYTC"), collectively referred to herein as the "Parties."

**WITNESSETH**

WHEREAS, INDOT is the agency responsible for Indiana's certification of disadvantaged business enterprise ("DBE") firms and the operation of Indiana's DBE Program under the Unified Certification Program ("UCP") in accordance with the requirements of 49 CFR Part 26 in the State of Indiana, and KYTC is the agency responsible for Kentucky's certification of DBE firms and the operation of Kentucky's DBE Program under the UCP in accordance with the requirements of 49 CFR Part 26 in the Commonwealth of Kentucky; and

WHEREAS, INDOT and KYTC agree to help remove any potential barriers to the participation of eligible certified DBE firms by establishing a Reciprocal DBE Certification Program; and

WHEREAS, pursuant to 49 CFR §26.81(e) and (f), INDOT and KYTC may, at their discretion, accept the certification of any other UCP, enter into written reciprocity agreements with other UCPs, or grant reciprocity to another jurisdiction's certification decisions; and

WHEREAS, the Parties agree that reciprocal acceptance of certification of DBE firms in their respective states is mutually beneficial in their efforts to achieve the objectives of the DBE Program as they are stated in 49 CFR §26.1, achieve each state's DBE participation goals, and to facilitate the completion of significant transportation projects;

NOW THEREFORE, in consideration of the promises, covenants, other good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

1. **Purpose.** The purpose of this Agreement is to:
  - a. Remove regulatory and administrative barriers which discourage participation by certified DBE firms in significant federally-funded transportation projects;
  - b. Increase opportunities for DBE firms;
  - c. Increase the utilization of certified DBE firms on federally-funded transportation infrastructure, construction and maintenance projects in the State of Indiana and the Commonwealth of Kentucky by allowing unimpeded certification reciprocity between the states' primary transportation agencies;
  - d. Work cooperatively with sister recipient agencies to assist in the achievement of their respective DBE participation goals; and
  - e. Reduce the cost of construction projects by increasing price competition amongst contractors.
2. **Term.** This Agreement shall be effective July 1, 2018 and shall terminate June 30, 2019 unless terminated early as provided herein. This Agreement may be amended in writing at the pleasure of the Parties. Following the completion of the initial term of this Agreement, the Parties may, by mutual written agreement, extend the term by annual increments, not to exceed four (4) additional years.
3. **Early Termination.** This Agreement may be terminated by either Party for any reason upon forty-five (45) days written notice to the other Party. Such notice shall be delivered by certified mail.

If a DBE firm is utilizing this Agreement in its non-home state and is in the process of providing services on any project when this Agreement is terminated or expires under its own terms, the DBE firm shall be allowed to continue to work in its non-home state until the project(s) on which is it providing services ends.

4. **Reciprocity.**
  - a. The Parties agree that Indiana and Kentucky DBEs certified in their respective home states shall be eligible to work as a certified DBE contractor or subcontractor

on any job let by the non-home state's primary transportation agency without seeking further DBE certification on federally funded transportation projects.

- b. Each Party to this Agreement shall retain primacy over the administration of its DBE certification decisions. Each Party to this Agreement shall have the authority to cite, discipline or remove DBEs working in the state where the project is executed in accordance with its required performance standards. As out-of-state DBEs will not be certified other than in their home state, only the home state may remove the firm's DBE certification.

DBEs operating under the Agreement are subject to all policies, statutes and regulations, including the DBE regulations under 49 C.F.R. Part 26, governing the execution of construction contracts of the state in which the work occurs.

- c. Each Party retains the right to make all final determinations concerning the DBE eligibility of firms in its own state.
  - d. This Agreement does not grant interstate certification to DBEs. DBEs working under this Agreement will only be listed in the DBE Directory of their home state.
  - e. This Agreement does not amend, alter, or affect the power of either Party to remove the certification of a DBE in accordance with 49 CFR §26.87. Further, within its own discretion, each Party to this Agreement shall be responsible for pursuing necessary discipline, sanctions or removals (as well as any resulting administrative proceedings or litigation) against DBEs certified by that Party. Each Party shall bear all costs associated with such proceedings that occur in regard to DBEs certified by that Party.
5. **Notification.** The Parties agree to notify the other monthly with a list of DBE firms involved in any completed investigation as well as any DBE firm that has been suspended or removed from the home state's certification list. The Parties also agree to notify the other as soon as practicable when a DBE is subject to a complaint pursuant to 49 CFR §26.103 or 49 CFR §26.87 and when a DBE firm has been suspended pursuant to 49 CFR 26.88.
6. **Procurement.** Certified DBEs seeking work under this Agreement must comply with the procurement and bidding requirements of the state in which the project is executed.
7. **Prequalification.** The Parties agree and acknowledge that issues related to prequalification are a separate matter not addressed by this Agreement. However, each

DBE firm must be prequalified pursuant to the requirements of the state where a project is executed.

**8. Compliance.**

- a. In addition to federal standards, DBEs must comply with all applicable local and state guidance, statutes, regulations and policies applicable to the work performed in the state in which the project is executed. Sanctions for non-compliance shall be at the discretion of the transportation agency in which the work is executed.
- b. DBEs shall comply with the policies and procedures of the state in which the project is executed. Work performed by DBEs shall be monitored in accordance with 49 CFR Part 26, Subpart F.
- c. Each state shall have the authority to remove underperforming DBEs who fail to meet the state's regulatory performance standards from a project. For any project a DBE may be removed from the project in accordance with the performance standards and requirements of each participating agency.

**9. Administration of Agreement.** The Parties recognize that the success of this Agreement is dependent upon cooperation and communication between the Parties. To facilitate the success of this Agreement the Parties shall meet no less than bi-monthly at a predetermined date and time to be determined by the Parties.

- a. The meeting shall be attended by representatives of each state's DBE Program with knowledge of the operation of the DBE Program and authorized to make decisions with regard to the administration of their respective DBE Programs;
- b. Attendees must include the DBE liaisons or their designee;
- c. Attendees shall include those persons responsible for certification, monitoring and communications;
- d. FHWA representatives shall be extended an invitation;
- e. The meeting agenda will be set by the DBE Liaisons with input for other attendees.

**10. Communication.** The Parties shall share all documents and any updates thereto, pertaining to the operation of its respective program that may impact implementation of this Agreement. At a minimum, the communication shall include:

- a. A monthly report listing DBEs utilizing the benefits of this Agreement;
- b. State regulations supplementing 49 CFR Part 26;
- c. Communications pertaining to issues related to potential decertification;
- d. Updated DBE Program Directory as soon as practicable, including names of DBE firms removed, suspension, decertified and withdrawals.
- e. All communications with representatives of the Federal Highway Administration regarding the execution and operation of this Agreement;
- f. All information concerning an investigation of inadequate performance, wrongdoing, malfeasance, or other misconduct by a DBE working under this Agreement; and
- g. The results of the routine monitoring of DBE performance.

11. **Notice to Parties.** The Parties agree the following, or their successors, are the designated persons for each Party:

a. INDOT

Elizabeth Kiefner Crawford  
 Director, Economic Opportunity Division  
 100 North Senate Avenue, Suite N750  
 Indianapolis, Indiana 46204  
 Phone: (317) 234-8008  
 Email: [ekiefner1@indot.in.gov](mailto:ekiefner1@indot.in.gov)

b. KYTC

Name	Jamir Davis
Title	Executive Director, Office for Civil Rights and Small Business Development
Address	200 Mero Street, 6 <sup>th</sup> Floor West, Frankfort, Kentucky 40622
Phone	(502) 564-3601
Email	<a href="mailto:jamir.davis@ky.gov">jamir.davis@ky.gov</a>

12. **Drafting.** No Party shall be deemed to be the primary drafter of this Agreement, and the terms of this Agreement shall not be construed against any Party as the drafter of

this Agreement. Each Party is equally responsible for this Agreement's terms and conditions.

13. **Sovereignty.** The Parties have entered into this Agreement as sovereign entities and not as principal and agent or as a joint venture. Nothing herein shall be construed as consent by either State to suit in the courts of the other State, or waiver of that State's sovereign immunity or rights under the Eleventh Article of Amendment to the Constitution of the United States.
14. **Third party Claims.** This Agreement does not grant any rights to any party except the States of Indiana and Commonwealth of Kentucky. Nothing in this Agreement shall be deemed to create or give rise to any right of action in, or any liability to, any third party claiming to have suffered a loss, damage or injury by virtue of any alleged failure by either Party hereto to comply with the terms of this Agreement.
15. **Compliance with Laws.** The Parties agree to comply with all applicable laws of their respective states and with all federal laws.
16. **DBE Requirements and Nondiscrimination Assurances.** Pursuant to the Civil Rights Act of 1964, the Parties 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 status as a veteran. The Parties shall ensure that consultants incorporate similar requirements in all of their contracts for any of the work prescribed herein and will require all of consultant's subcontractors for any part of such work to incorporate such requirements in all subcontracts for such work.
17. **Funding Cancellation.** If either party makes a written determination that funds are not appropriated or otherwise available to support continuation of performance of this Agreement, this Agreement shall be cancelled. A determination by the Director of the Indiana State Budget Agency or the Secretary of KYTC that funds are not appropriated or otherwise available to support continuation of performance shall be final and conclusive.
18. **Hold Harmless.** The Parties agree to exculpate and hold harmless each other and their officials and employees from any liability due to loss, damage, injuries, or other casualties of whatever kind, to the person or property of anyone arising out of, or resulting from the performance of this Agreement or the work connected therewith, or from the installation, existence, use, maintenance, condition, repairs, alteration or removal of any equipment or material, to the extent such liability is caused by the

negligence of either Party, including any claims arising out the Worker's Compensation Act or any other law, ordinance, order or decree. The Parties shall **not** provide indemnification to each other or to any other party.

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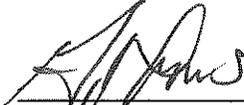
In Witness Whereof, the State of Indiana and the Commonwealth of Kentucky have, through their duly authorized representatives, entered into this Agreement effective on the date last written below. The Parties, having read and understood the foregoing terms of this Agreement, do by their respective signatures dated below agree to the terms thereof.

**STATE OF INDIANA**

  
\_\_\_\_\_  
Joseph McGuinness  
Commissioner  
Indiana Department of Transportation

Date: 1/5/17

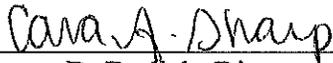
**COMMONWEALTH OF KENTUCKY**

  
\_\_\_\_\_  
Greg Thomas  
Secretary  
Kentucky Transportation Cabinet

Date: 12/19/17

**APPROVALS**

State Budget Agency

  
\_\_\_\_\_  
Jason D. Dudich, Director (for)

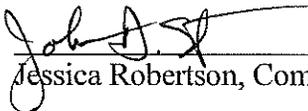
Date: 1/26/18

Approved as to Form and Legality:

  
\_\_\_\_\_  
Office of Legal Services  
Kentucky Transportation Cabinet

Date: 12/15/17

Department of Administration

  
\_\_\_\_\_  
Jessica Robertson, Commissioner (for)

Date: 1/16/18

Attorney General

Approved as to Legality and Form:

  
\_\_\_\_\_  
Curtis T. Hill, Jr., Attorney General (for)

Date: 2/1/18