

COMMONWEALTH OF KENTUCKY

TRANSPORTATION CABINET

**RAILROAD COORDINATION FOR CABINET PROJECTS**

**KEEP COST TERM AGREEMENT**

**PURSUANT TO KRS 277.065**

This RAILROAD COORDINATION TERM AGREEMENT is made and entered into by and between the Kentucky Transportation Cabinet, Department of Highways, hereinafter the Cabinet, and ***Railroad Company*** hereinafter referred to as the ***Company***.

1. **AGREEMENT PREMISES**
2. The Cabinet and the ***Company***, in the interest of public safety and convenience, propose to enter into a term Agreement for use when a Cabinet initiates a project which passes either over, under, immediately adjacent to, or at-grade with the ***Company’s*** railroad facilities (collectively, the “Projects”, individually a “Project”).
3. The ***Company*** will receive authorization of each project by addendum with the following information: project description, location, length, Cabinet’s survey and general plan sheets, funding source, and request for estimate; all of which are hereby made a part of this Agreement and referenced as Project Addendum, Exhibit A.
4. The Projects will be authorized by individual TC 10-1, Official Order Authorization and may be subject to appropriate reimbursement by the Federal Highway Administration or Cabinet, which as pertains to this Agreement and the amount reimbursable to the ***Company*** will be negotiated.
5. The Project shall be constructed in accordance with the Plans. No changes may be made to the Plans within the vicinity of the ***Company*** facilities without the prior approval of the Cabinet and the ***Company***.

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1. **SCOPE OF AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing scope and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the parties agree as follows:

1. It is the purpose of this Agreement to provide for the terms and conditions upon which the Projects may proceed.
2. The right of way for the proposed roadwork for each Project will pass over, under or at grade and include certain ***Company*** facilities constructed and now maintained by the ***Company***.
3. The railroad facilities may be impacted to varying degrees by the project and the ***Company*** is hereby authorized to provide preliminary engineering and administration. These services are expected to produce an estimate for final engineering, construction engineering management, construction, and flagging services to ensure the integrity of the ***Company*** facilities as they may be impacted by the Projects as shown on the Cabinet’s survey and general plan sheets.
4. The Cabinet acknowledges that by entering into this Agreement (1) the ***Company*** will provide services and accommodations to promote the Projects, without profit or other economic inducement typical of other Cabinet contractors; (2) neither the ***Company*** nor its affiliates (including their respective directors, officers, employees or agents) will incur any costs, expenses, losses or liabilities in excess of payments made to the ***Company*,** by or on behalf of the Cabinet or its contractors, pursuant to the Agreement addendum; and (3) the ***Company*** retains the paramount right to regulate all activities affecting its property and operations.
5. The ***Company*** is authorized herein to administer and preliminary engineer with the express intention to produce an estimate of all ***Company*** work needed to complete the Projects. The anticipated work is to include any/all of the following: administration, preliminary and final engineering, construction inspection, construct and flagging services needed to ensure the Project maintain the integrity of the ***Company*** facilities. It is agreed that this work may be performed with the ***Company’s*** regular engineering, administrative and inspection forces, or its contractor.
6. ***Company or its Contractor*** will furnish the necessary preliminary engineering and/or administrative services to produce an estimate for the coordination of the ***Company’s*** facilities on each Project. The total cost of such services will be presented within the body of the estimate and will include engineering services, administrative, and flagging services.
7. The parties agree that for each Project, the Cabinet will submit to the ***Company*** a Project Addendum for administration, preliminary engineering and construction engineering/work, the form of which is attached hereto as Project Addendum, Exhibit A, citing project specific descriptions, obligations and responsibilities. The ***Company*** agrees that it will not begin work, with the exception of work associated with developing the Project Addendum, prior to receipt of a fully executed copy of Project Addendum, Exhibit A, and that any expense the ***Company*** incurs prior to the execution of the relevant Project Addendum, Exhibit A may be declared ineligible for the reimbursement.
8. If the ***Company*** proposes to include betterment, as defined by Cabinet policy, in this Agreement, all work directly pertaining to said betterment is detailed in Project Addendum, Exhibit A and is not reimbursable.
9. The parties acknowledge and agree that receipt of Project Addendum, Exhibit A by the ***Company*** from the Cabinet constitutes authorization for the ***Company*** to incur, and receive reimbursement for, costs and expenses incurred in connection with or necessary to perform the preliminary engineering required to develop the plans and estimates for the Project and the construction engineering/work, if the ***Company*** terms are approved by the Cabinet.
10. By its review, approval or preparation of Plans pursuant to this Agreement, the ***Company*** signifies only that such Plans and improvements constructed in accordance with such Plans satisfy the ***Company***’s requirements. The ***Company*** expressly disclaims all other representations and warranties in connection with the Plans, including, but not limited to, the integrity, suitability or fitness for the purposes of the Cabinet or any other persons of the Plans or improvements constructed in accordance with the Plans.
11. Insofar as it has the right to do so, and subject to its prior approval of the Cabinet’s plans, ***Company*** hereby grants Cabinet, for the duration of the Projects, as defined in the Agreement Addendum, a nonexclusive license to access and cross ***Company***’s property, to the extent necessary for the construction of the Projects (excluding ingress or egress over public grade crossings), along such routes and upon such terms as may be defined and imposed by ***Company*** and such temporary construction easements as may be designated on any Plans for the Projects approved by ***Company***.
12. Insofar as it has the right to do so, and by separate prior mutual agreement, ***Company*** shall grant, without warranty to Cabinet, permanent easements or property for the use and maintenance of the Projects wholly or partly on ***Company*** property as shown on any Plans approved by ***Company***, on terms and conditions and at a price acceptable to the parties. Upon request by ***Company***, Cabinet shall furnish to ***Company*** descriptions and plat plans for the easements.

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1. The parties hereto agree that this Agreement and the covenants and conditions contained herein shall be effective as of the Effective Date of this Agreement. This Agreement shall remain in effect for a period of ten (10) years from the date of execution, and may be extended thereafter contingent upon parties’ concurrence for an agreed upon period not to exceed five (5) years. Each Agreement Addendum shall be effective as of its Effective Date until the completion of the applicable project. Expiration shall not affect any projects initiated under the terms hereof prior to the effective expiration date.

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1. **RESPONSIBILITIES OF THE *Company***

Work in connection with a Project shall be allocated and conducted as follows:

1. If the ***Company*** chooses to use a contractor or a subcontractor, the ***Company*** is required to obtain prior Cabinet approval in writing pursuant to 23 CFR 646.216. The Cabinet reserves the right to refuse reimbursement for any and all costs associated with work performed by a contractor or subcontractor prior to their approval by the Cabinet. The Cabinet is hereby held harmless from all actions taken by a contractor or subcontractor related to the ***Company***’s failure to acquire said approvals. Said work is to be paid under a contract let by the ***Company***, adhering to the cost share stipulations described herein.
2. The ***Company*** shall submit any change orders necessary to the Cabinet for consideration and approval before initiation of the work detailed in said change order. A change order shall be considered in the event there is a change in the scope of work, extra work to be performed, or other major changes in the work covered by this Agreement. Said change order must be reasonably detailed and include proper itemizations from the ***Company***, computed in accordance with the methods and procedures set forth in 23 CFR 635.120. If the ***Company*** fails to obtain prior approval of a change order from the Cabinet, the Cabinet has the right to refuse reimbursement of expenditures for such change order.
3. Subject to timely payment of Reimbursable Expenses as provided by Section *IV Responsibilities of the Cabinet*, the ***Company*** shall perform, or cause to be performed, the ***Company*** work as set forth in each Project Addendum. ***Company*** will furnish all equipment and materials in accordance with 23 CFR 140.908 and 23 CFR 140.910. Cabinet agrees that ***Company*** shall provide all services that ***Company*** deems necessary or appropriate to preserve and maintain its property and operations, without impairment or exposure to liability of any kind and in compliance with all applicable federal, state and local regulations and ***Company***’s contractual obligations, including, but not limited to, ***Company***’s existing or proposed third party Contracts and collective bargaining Contracts. ***Company*** work may be accomplished by (a) railroad force account, (b) contracting with the lowest qualified bidder based on appropriate solicitation, or (c) existing continuing contracts at reasonable costs as approved by the Cabinet. In addition to using its own forces for ***Company*** work, the ***Company*** may use the services of a contractor which works for the ***Company*** on a routine basis under a written continuing contract, or let the work to contract through competitive bidding with the Cabinet’s concurrence in the award of the contract. In cases of continuing contracts, the Cabinet retains the right to receive, review and approve rates.

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1. The ***Company*** shall commence its construction coordination activities under this Agreement following: (a) delivery to the ***Company*** of a Project Addendum from Cabinet; (b) issuance of all permits, approvals and authorizations necessary or appropriate for the work; and (c) delivery of proof of insurance acceptable to the ***Company***, as required by Section IV. Paragraph 14. The initiation of any construction coordination services by the ***Company*** pursuant to this Agreement, including, but not limited to, the issuance of purchase orders or bids for materials or services, shall constitute commencement of construction coordination activities for the purposes of this Section. The ***Company*** shall give the Cabinet and the Federal Highway Administration, when applicable, ample opportunity to inspect materials recovered by the ***Company*** in accordance with 23 CFR 140.908.
2. The ***Company*** shall perform all design reviews in a period of thirty (30) calendar days from receipt.
3. The ***Company*** shall provide an estimate of the total Reimbursable Expenses for each Project (the “**Estimate**”, as amended or revised) and attach the estimate to the respective Project Addendum. In the event the ***Company*** anticipates that actual Reimbursable Expenses for a Project may exceed such Estimate, it shall provide Cabinet with the revised Estimate of the total Reimbursable Expenses for Cabinet’s approval and confirmation that sufficient funds have been appropriated to cover the total Reimbursable Expenses of such revised Estimate. The ***Company*** may elect, by delivery of notice to Cabinet, to immediately cease all further work on a Project, unless and until Cabinet provides such approval and confirmation.
4. Project Addendum, Exhibit A shall indicate if the proposed Project is an ascertainable benefit to ***Company*** as defined in the 23 CFR 140.914, and supplements. If the proposed work in an ascertainable benefit to the ***Company,*** the ***Company*** shall participate in the cost of the Project as set forth in 23 CFR 646, Subpart B and include the level of participation in the respective Project Addendum.
5. ***Company*** invoice information shall be included with the payment to identify the specific project and invoice. ***Company*** agrees to submit its bills for reimbursement in accordance with 23 CFR 140, Subpart I.
6. Following completion of a Project, ***Company*** shall submit to Cabinet a final invoice that reconciles the total Reimbursable Expenses incurred by ***Company*** against the total payments received from Cabinet. In the event that the payments received by ***Company*** from Cabinet exceed the Reimbursable Expenses, ***Company*** shall remit such excess to Cabinet.

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1. Itemized bills from the ***Company*** will be in detail form that will meet the approval of the Cabinet and the Federal Highway Administration.

**Payments will be made on the following basis in accordance with 23 CFR 140.922:**

* + - 1. **Current Billings.** The ***Company*** may submit current billings reflecting the actual cost incurred during any given work period, in which case, the current billings will be paid within thirty (30) business days after receipt of same by the Cabinet.
      2. **Final Payment.** Upon completion of all said work and the submission of final itemized invoices, deliverables, and drawings, the ***Company*** shall provide one final and complete billing of all remaining costs incurred, within one year following completion of the rail coordination work performed by the ***Company*** pursuant to this Agreement, otherwise previous payments to the railroad shall be considered final, except as agreed to between the Cabinet and the ***Company***. The final billing will be forwarded for payment after review and approval of the District Utilities Supervisor and submitted to the Central Office Utilities Section, it being understood, however, that the billings are subject to audit and verification by the Cabinet and/or the Federal Highway Administration.

1. The Cabinet 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 ***Company***, as defined in KRS 45A.030(9) agrees that the Cabinet, 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. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the contract and shall be exempt from disclosure as provided in KRS 61.878(1)(c). The ***Company*** also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884.
2. All records of the ***Company*** pertaining to this project will be subject to inspection at any reasonable time by representatives of the Cabinet and/or the Federal Highway Administration, and shall be retained as prescribed in 23 CFR 140.922(c). Such records shall be maintained in accordance with 49 CFR 18.42 - *Retention and Access Requirements for Records*.
3. If the project includes a railroad bridge structure over the Cabinet’s facility, the ***Company*** shall own and, at its sole cost and expense, maintain, repair, replace and renew its tracks, ballast and approach embankments, and railroad signal and communication systems, and ***Company*** shall be permitted to install, maintain, repair and replace other utilities, facilities and cable, or cause same to be done, as ***Company*** authorizes from time to time on or within the railroad bridge structure.
4. The ***Company*** shall maintain and repair, at its sole cost and expense, the crossing surface between the ends of its cross ties. The ***Company*** shall maintain and repair the warning signal facilities at the crossing, at the ***Cabinet’s*** cost and expense, as set forth in the Maintenance Contract between the parties.
5. If a Project involves the installation of warning devices, ***Company*** shall own and maintain the warning devices after the warning devices have been installed and found in satisfactory working order by the parties hereto, so long as it may operate the railroad at the Project crossing or until it is agreed upon between the parties hereto that the warning devices are no longer necessary at the Project crossing or until the Project crossing is abandoned or other legal requirements make it necessary to cease operation and maintenance of the warning devices at the Project crossing. At such time the warning devices shall be moved to another location on ***Company’s*** line within the Commonwealth of Kentucky as agreed upon by the parties hereto. The cost of the maintenance of the warning devices shall be as set forth in the Maintenance Contract between the parties, as revised and/or updated.
6. The ***Company*** agrees to indemnify and hold harmless the Cabinet against any and all third-party claims, demands, obligations or litigation that result from: (a) any material breach of this Agreement by the ***Company***; (b) any and all negligent acts of the ***Company***; and (c) any policy, procedure or employment practice of the ***Company*** violating applicable Federal, State or local laws.
7. The ***Company*** shall take all necessary precautions for the safety of employees on the work site and shall comply with all applicable provisions of FRA, Federal, State and municipal safety laws and building codes to prevent accidents or injury to persons on, about or adjacent to the premises where the work is being performed. The ***Company*** shall comply with all applicable FRA and Federal and State Occupational Safety and Health Administration (OSHA) standards including 29 CFR 1910 and Kentucky Revised Statutes (KRS) Chapter 338.
8. KRS 45A.480 requires the ***Company*** to comply with the Cabinet’s requirements pertaining to workers’ compensation insurance and unemployment insurance. By execution of this Agreement, the ***Company*** agrees that all Kentucky based contracting in connection with this Agreement shall be in compliance with Kentucky requirements for Workers’ Compensation Insurance KRS Chapter 342 and Unemployment Insurance KRS Chapter 341.
9. As provided in KRS 337.505 to 337.550, all laborers, workmen and mechanics performing work under the Agreement shall be compensated not less than the prevailing hourly rate of wages as determined by the Commissioner for the Department of Workplace Standards.
10. The Commonwealth of Kentucky and the Cabinet are prohibited from contracting with firms that utilize the services of illegal immigrants in the performance of a contract of goods, services or construction purposes and the performance of a contract with the Commonwealth. By execution of this Agreement, the ***Company*** agrees not to hire any illegal immigrants itself and to take commercially reasonable measures to ensure that its contractors and their subcontractors not utilize the services of illegal immigrants.
11. The ***Company*** 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 this Agreement. The ***Company*** shall maintain certification of authority to conduct business in the Commonwealth of Kentucky during the term of this Agreement. Such registration is obtained from the Secretary of State, who will also provide the certification thereof.

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1. **RESPONSIBILITIES OF THE CABINET**

Work in connection with a Project shall be allocated and conducted as follows:

1. The Cabinet will obtain all necessary licenses and easements, as well as all authorizations, permits and approvals from all local, state and federal agencies (including the Cabinet), and their respective governing bodies and regulatory agencies, necessary to proceed with the Projects and to appropriate all funds necessary to construct the Projects. Copies shall be provided to the ***Company***.
2. If required and applicable, the Cabinet will recommend approval of the Projects to the Federal Highway Administration for construction with funds apportioned to the Cabinet under the Federal Aid Highway Program, and Acts amendatory thereof and supplementary thereto, including Subpart A of 23 Code of Federal Regulations (CFR) 646.
3. All plans, specifications, drawings and other documents necessary or appropriate to the design and construction of the Project shall be prepared, at the Cabinet’s sole cost and expense, by Cabinet or ***Company*** or their respective contractors. Project plans, specifications and drawings prepared by or on behalf of the Cabinet shall be subject, at ***Company***’s election, to the review and approval of ***Company*** in a timely manner. Such plans, specifications and drawings, as prepared or approved by ***Company***, are referred to as the “Plans”, and shall be incorporated and deemed a part of the respective Project Addendum.
4. In the event that it shall be necessary in connection with or incidental to any work on a Project to make any adjustment in facilities of tenants of the ***Company***, such adjustments shall be handled by the Cabinet directly with the owner or owners thereof at no expense to the ***Company***.

1. The Cabinet shall observe and abide by, and shall require its contractors (“**Contractors**”) to observe and abide by the terms, conditions and provisions of the “Special Notes for Protection of Railroad Interests” set forth in Exhibit B to this Agreement (the “**Special Provisions**”) which shall be included in the Contractor’s contract. The special provisions are to be fully inclusive of all terms and conditions necessary to be considered by project contractors. To the extent that Cabinet performs Project work itself, Cabinet shall be deemed a Contractor for purposes of this Agreement. Cabinet further agrees that, prior to the commencement of work on a Project by any third party Contractor, such Contractor shall execute and deliver to the ***Company*** Exhibit D to this Agreement to acknowledge Contractor's Contract to observe and abide by the terms and conditions of this Agreement.
2. Cabinet shall perform, or cause to be performed, all Cabinet work as set forth in each Project Addendum, at Cabinet’s sole cost and expense unless otherwise specified in the Project Addendum.
3. Cabinet shall reimburse ***Company*** for all costs and expenses incurred by ***Company*** in connection with the Project, including, without limitation: (a) all out of pocket expenses, (b) travel and lodging expenses, (c) telephone, facsimile, and mailing expenses, (d) costs for equipment, tools, materials and supplies, (e) sums paid to ***Company***’s consultants and subcontractors, and (f) ***Company*** labor in connection with the Project including flagging services, together with ***Company*** labor overhead percentages established by ***Company*** pursuant to applicable law (collectively, “**Reimbursable Expenses**”).
4. Cabinet shall pay the ***Company*** for Reimbursable Expenses in arrears for its Reimbursable Expenses incurred for each Project. The ***Company*** agrees to submit invoices to Cabinet for such amounts and Cabinet shall remit payment to ***Company*** within thirty (30) working days following delivery and approval of each appropriately submitted and approved invoice to Cabinet.
5. Cabinet shall pay to ***Company*** the amount by which Reimbursable Expenses exceed total payments as shown by the final invoice, within thirty (30) working days following delivery and approval of such invoice to Cabinet.
6. All invoices from ***Company*** shall be delivered to Cabinet in accordance with Section III, Paragraph 10, of this Agreement. All payments by Cabinet to ***Company*** shall be made by electronic payment or check mailed to the following address or such other address as designated by ***Company***’s invoice to Cabinet:

*Railroad Company*

*Contact*

*Address*

*Address*

1. The Cabinet will reimburse the ***Company*** for the actual cost of the work upon presentation of invoices from the ***Company.*** The ***Company*** will compute costs by and in accordance with the methods and procedures set forth in 23 CFR 140. The method of developing the relocation costs is found in 23 CFR 646.
2. In addition to the insurance that Cabinet requires of its Contractor, Cabinet shall acquire or require its Contractors to purchase and maintain insurance in compliance with ***Company’s*** insurance requirements attached to this Agreement as Exhibit B. Neither Cabinet nor Contractor shall commence work on the Project until such policy or policies have been submitted to and approved by ***Company’s*** Risk Management Department.
3. Cabinet shall comply, and shall require its Contractors to comply, with any federal, state, or local laws, statutes, codes, ordinances, rules, and regulations applicable to its construction and maintenance of the Project. Cabinet’s Contractors shall indemnify, defend, and hold ***Company*** and its affiliates harmless with respect to any fines, penalties, liabilities, or other consequences arising from breaches of this Section.
4. Cabinet and its Contractor shall notify ***Company*** promptly of any loss, damage, injury or death arising out of or in connection with the Project work.

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1. **ADDITIONAL REQUIREMENTS**
2. In the event that a Project location or locations occur at crossings with adjacent highway intersections equipped with, or requiring installation of, highway traffic signals, and the Cabinet desires provisions for interconnection between the automatic highway-rail grade crossing warning systems and the highway traffic signals to provide preemption of normal traffic signal operations (“**Interconnection/Pre-emption**”), ***Company*** and the Cabinet agree that a separate Contract regarding the Interconnection/Pre-emption shall be required.
3. In addition to the other rights and remedies available to the parties under this Agreement, the parties may terminate work on a Project by delivery of notice to the other party in the event that party or its Contractors fail to observe the terms or conditions of this Agreement and such failure continues more than ten (10) business days following delivery of notice of such failure by ***Company*** to Cabinet.
4. Cabinet may terminate this Agreement if funds are not appropriated to the Cabinet or are not otherwise available for the purpose of making payments without incurring any obligation for payment after the date of termination, regardless of the terms of the Agreement. The Cabinet shall provide the ***Company*** thirty (30) calendar days written notice of termination of the Agreement.
5. If work on a Project is terminated by either party pursuant to this Section or any other provision of this Agreement, the parties understand that it may be impractical for them to immediately stop the work. Accordingly, they agree that, in such instance a party may continue to perform work until it has reached a point where it may reasonably and safely suspend the work. Cabinet shall reimburse ***Company*** pursuant to this Agreement for the work performed, plus all costs reasonably incurred by ***Company*** to discontinue the work and protect the work upon full suspension of the same, the cost of returning ***Company*** property to its former condition, and all other costs of ***Company*** incurred as a result of the Project up to the time of full suspension of the work. Termination of work on a Project, for any reason, shall not diminish or reduce Cabinet’s obligation to pay ***Company*** for Reimbursable Expenses incurred in accordance with this Agreement. In the event of the termination of work on a Project for any reason, ***Company’s*** only remaining obligation to Cabinet shall be to refund to Cabinet payments made to ***Company*** in excess of Reimbursable Expenses in accordance with Section *IV Responsibilities of the Cabinet*.
6. The provisions of Section *IV Responsibilities of the Cabinet* shall survive the termination or expiration of this Agreement.

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1. The parties agree that neither Cabinet nor its Contractors shall be deemed either agents or independent contractors of ***Company***. Except as otherwise provided by this Agreement, ***Company*** shall exercise no control whatsoever over the employment, discharge, compensation of, or services rendered by Cabinet or Cabinet’s Contractors, or the construction practices, procedures, and professional judgment employed by Cabinet or its Contractor to complete the Project. Notwithstanding the foregoing, this shall in no way affect the absolute authority of ***Company*** to prohibit Cabinet or its Contractors or anyone from entering ***Company’s*** property, or to require the removal of any person from its property, if it determines, in its sole discretion, that such person is not acting in a safe manner or that actual or potential hazards in, on or about the Project exist.
2. This Agreement embodies the entire understanding of the parties, may not be waived or modified except in a writing signed by authorized representatives of both parties, and supersedes all prior or contemporaneous written or oral understandings, Contracts or negotiations regarding its subject matter. In the event of any inconsistency between this Agreement and the Exhibits, the more specific terms of the Exhibits shall be deemed controlling.
3. This Agreement is made and expressly executed in the names of the parties hereto by their respective officers, officials or other persons who are authorized to execute it, and it is deemed by the Parties to be a contract under seal.
4. If either party fails to enforce its respective rights under this Agreement, or fails to insist upon the performance of the other party’s obligations hereunder, such failure shall not be construed as a permanent waiver of any rights or obligations in this Agreement.
5. ***Company*** may assign this Agreement and all rights and obligations herein to a successor in interest, parent ***Company***, affiliate, or future affiliate. Upon assignment of this Agreement by ***Company*** and the assumption of ***Company’s*** assignee of ***Company’s*** obligations under this Agreement, ***Company*** shall have no further obligation under this Agreement. Cabinet shall not assign its rights or obligations under this Agreement without ***Company’s*** prior consent, which consent may be withheld for any reason.
6. The Kentucky General Assembly may allow for a reduction in contract worker hours in conjunction with a budget balancing measure for some professional and non-professional service contracts. If under such authority the Cabinet is required by Executive Order or otherwise to reduce contract hours, the contract will be reduced by the amount specified in that document.
7. All notices, consents and approvals required or permitted by this Agreement shall be in writing and shall be deemed delivered upon personal delivery, upon the expiration of three (3) days following mailing by first class U.S. mail, or upon the next business day following mailing by a nationally recognized overnight carrier, to the parties at the addresses set forth below, or such other addresses as either party may designate by delivery of prior notice to the other party:

If to ***Company***:

*Railroad Company*

*Contact*

*Address*

*Address*

If to Cabinet:

Kentucky Transportation Cabinet

Utilities and Rails Branch

200 Mero Street

Frankfort, Kentucky 40622

Attention: Branch Manager of Utilities and Rails

1. The ***Company*** shall comply with the 18 United States Code (U.S.C.) 874 Copeland “Anti-Kickback” Act as supplemented in Cabinet of Labor regulations (29 CFR Part 3).
2. It is agreed by and between the parties hereto that 23 CFR 140, 23 CFR 646, and supplements and amendments thereto form an essential part of this Agreement, and shall in no way be abrogated or superseded by the terms and provisions of this Agreement.
3. By execution of this Agreement, the parties agree that the scope of this Agreement shall be in compliance with all applicable Federal, State and local laws, regulations and mandates. Compliance as described herein includes, but not exclusively, environmental regulations such as: Section 306 of the Clean Air Act (42 U.S.C. 1857(h)); Section 508 of the Clean Water Act (33 U.S.C. 1368); Executive Order 11738; and Environmental Protection Agency regulations (40 CFR Part 15).

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1. Cabinet shall own and, without cost to the ***Company***, maintain, repair, replace and renew, or cause same to be done, in good condition and repair to the ***Company’s*** satisfaction, the railroad bridge structure (excluding only those components which the ***Company*** owns and has agreed to maintain, repair and replace pursuant to this Section), the highway underpass or overpass structure, the roadway surfacing, the roadway slopes, the retaining walls, the roadway drainage facilities, sidewalks and lighting. The permanent aspects of the Project, as shown by the Plans, include roadway pavement up to the outer ends of the railroad cross ties, sidewalks, guardrails, and curbs. The Cabinet in its maintenance of the facilities agrees to obtain permission from the ***Company*** before undertaking any work which may interfere with or be a real or potential hazard to passage of trains or other railroad operations and complete a Project Addendum if deemed necessary based on the scope of the maintenance work. In the event that Cabinet fails to properly maintain such structures and improvements, after reasonable notice from ***Company*** (no more than thirty (30) days, unless an emergency condition exists or is imminent in the opinion of ***Company***, that requires immediate action), and such failure, in the opinion of the ***Company***, jeopardizes the safe and efficient operation of its property, ***Company*** may perform such maintenance and repair, at Cabinet’s sole cost and expense. Upon the cessation of use of the Project by Cabinet, Cabinet shall remove the improvements and restore ***Company’s*** property to its original condition, at Cabinet’s sole cost and expense, to ***Company’s*** satisfaction.
2. Cabinet shall not undertake any alteration, modification or expansion of the Project, without the prior written approval of ***Company***, which may be withheld with cause, and the execution of such Contracts as ***Company*** may require. ***Company*** may undertake alterations of its property, track or facilities if made necessary by the project and shall be reimbursed by Cabinet for the expenses incurred by ***Company*** with respect to the removal and restoration of the crossing in connections with such alteration.
3. The Cabinet reserves the right in its sole discretion to demand that the ***Company*** and all subcontractors immediately cease any portion of, or all further work undertaken within the scope of work of this Agreement. The Cabinet reserves the right at its sole discretion and with thirty (30) days written notice to terminate or suspend the authorization for any and all work, any portion of, or all further work within the scope of work, without the Cabinet incurring any penalty or obligation for the reimbursement of unauthorized further work or expenditure incurred by the ***Company*** after the date of notice of termination. Any authorized services performed, materials used or installed to the satisfaction of the Cabinet before the demand to cease any or all further work shall be paid in accordance with Section III, Paragraph 10. The Cabinet shall thereafter authorize the ***Company*** in writing to undertake only minimal, reasonable and necessary additional work or services and acquire, expend, use or install only minimal, reasonable and necessary additional materials to reestablish the original use and function of their facility.
4. This Agreement shall be governed by and shall be construed in accordance with the laws of the Commonwealth of Kentucky. In the event that any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions of this Agreement, but this Agreement shall be construed as if such invalid, illegal, or unenforceable provisions had never been contained herein, unless the deletion of such provision or provisions would result in such a material change so as to cause completion of the transactions contemplated herein to be unreasonable.
5. To the extent applicable to this agreement, the **Company** shall comply with the Buy America requirements set forth in 23 U.S.C. 313 and 23 CFR 635.410. The **Company** is not required to change its existing standards for materials as long as the applicable Buy America requirements are met. Buy America requirements take precedence over regulations pertaining to the accommodation or relocation of the **Company’s** facilities set forth in 23 CFR 645 and over regulations which allow the **Company** to furnish materials from **Company** stock set forth in 23 CFR 645.117(e). **Company** stock materials that do not meet applicable Buy America requirements may not be permanently incorporated into a FAHP funded project. The **Company** understands and acknowledges that the Agreement may be subject to the requirements of the Buy America law, 23 U.S.C. 313 and applicable regulations, including 23 CFR 635.410 and Federal Highway Administration guidance. The **Company** must provide certification that all steel and iron products and their coatings, permanently incorporated into the project are compliant with the Buy America requirements.  In lieu of a separate certification, the **Company** hereby certifies that in the performance of this Agreement, for products where Buy America requirements apply, it shall use only such products for which it has received a certification from its supplier, or provider of construction services that procures the product certifying Buy America compliance. This does not include products for which waivers have been granted under 23 CFR 635.410 or other applicable provisions. Individual invoices are certified via signature and submission of the statement of charges (TC69-008) form. In some circumstances, a waiver of the Buy America requirements may be granted by the FHWA, to be determined on a project-by-project basis.
6. In the event of a dispute between the contractor and the contracting agency, Attorney General, or the Auditor of Public Accounts over documents that are eligible for production and review, the Finance and Administration Cabinet shall review the dispute and issue a determination, in accordance with Secretary's Order 11-004. (See attachment)

**AGREEMENT EXECUTION**

By the execution of this Agreement, the Parties warrant that they have fully read the Agreement, and agree to the terms and conditions. The ***Company*** warrants that the ***Company*** facilities exist and require active ***Company*** participation on behalf of the ***Company***. The required services are reimbursable.

**IN WITNESS WHEREOF**, the parties have executed this Agreement by their duly authorized officers.

This, the \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_day of\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ 2014.

**COMMONWEALTH OF KENTUCKY**

**TRANSPORTATION CABINET APPROVALS**

Approval of the Utilities & Rails Branch

Signature:

TEBM – Utilities and Rails

Date:

Approval of the Division of Right of Way and Utilities

Signature:

Keith McDonald, Division Director

Approved Form and Legality

Signature:

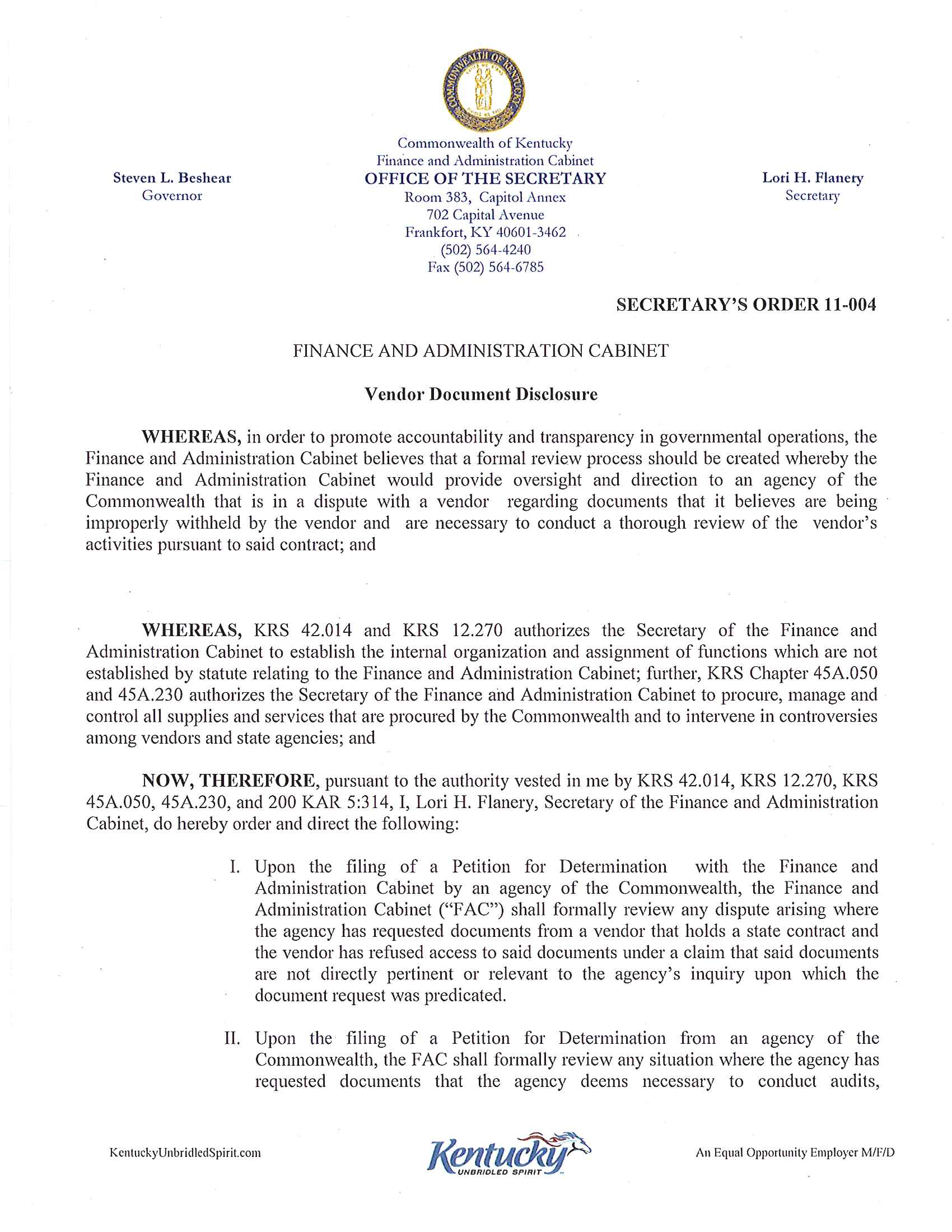
Attorney for Office of Legal Services

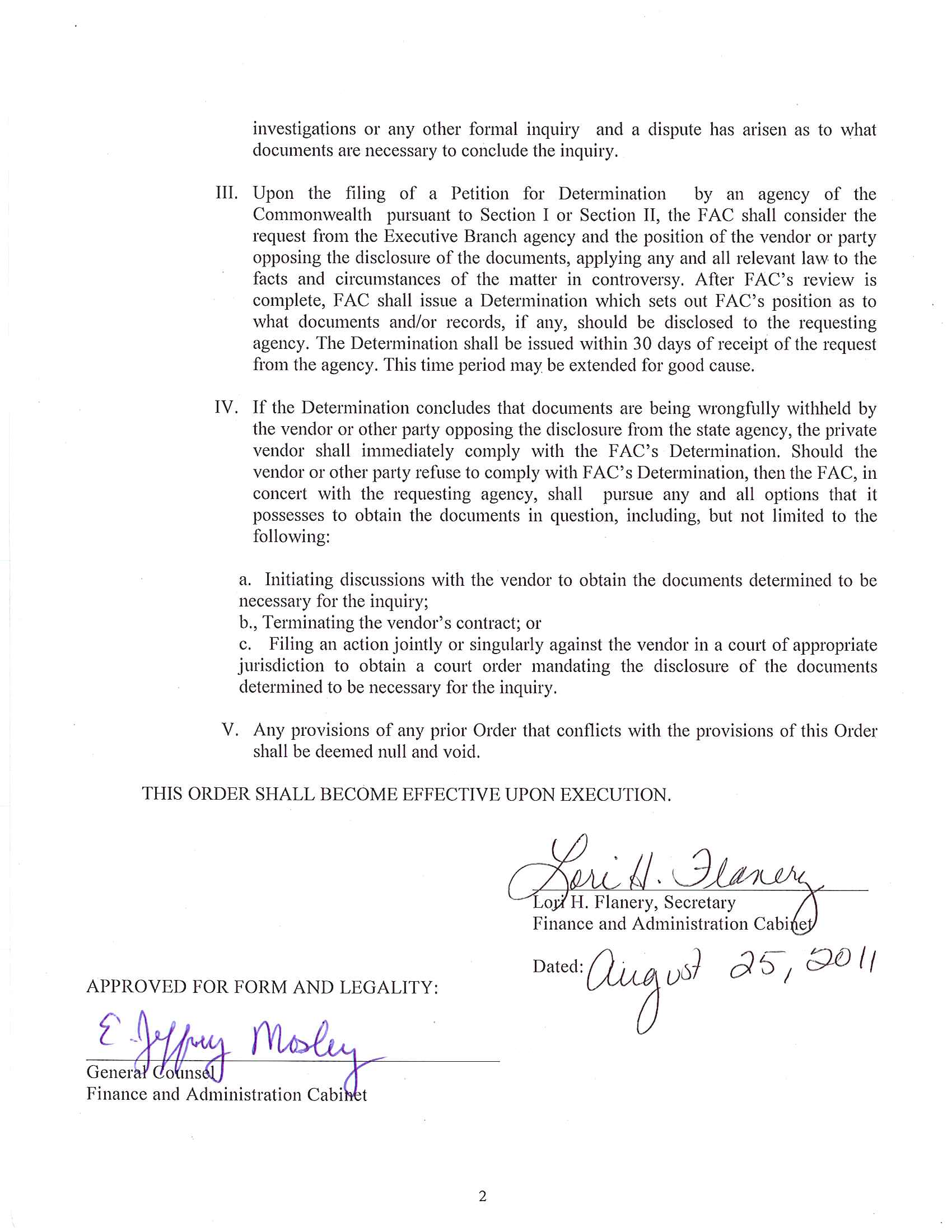
Date:

Approval of ***Company***

Printed Representative Name: Date:

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

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