

**HARDIN COUNTY FISCAL COURT
RESOLUTION NO. 2022-012**

BE IT RESOLVED, upon recommendation of Judge/Executive Harry L. Berry, to approve the grant application for 2021 Emergency Management Performance Grant Program (EMPG); Federal Award Period of October 1, 2021 through September 30, 2023.

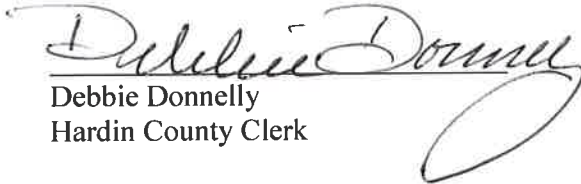
BE IT FURTHER RESOLVED, to authorize the Judge/Executive to sign all documents concerning the grant.

ADOPTED, by the Hardin County Fiscal Court in its regular meeting on 11 January 2022.



Harry L. Berry
Hardin County Judge/Executive

ATTEST:



Debbie Donnelly
Hardin County Clerk

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Approvals

This contract is subject to the terms and conditions stated herein. By affixing signatures below, the parties verify that they are authorized to enter into this contract and that they accept and consent to be bound by the terms and conditions stated herein. In addition, the parties agree that (i) electronic approvals may serve as electronic signatures, and (ii) this contract may be executed in any number of counterparts, each of which when executed and delivered shall constitute a duplicate original, but all counterparts together shall constitute a single contract.

1st Party:

Signature

Title

Printed Name

Date

2nd Party:



Signature

Hardin County Judge/Executive

Title

Harry L. Berry

Printed Name

11Jan2022

Date

Other Party:

Signature

Title

Printed Name

Date

Approved as to form and legality:

Attorney

**KENTUCKY EMERGENCY MANAGEMENT
EMERGENCY MANAGEMENT ASSISTANCE PROGRAM
NON-SUPLANTING CERTIFICATION**

It is necessary to provide assurance that sub-grant funds will not be used to replace (supplant) funds that would normally be available or appropriated for the same purpose. The certificate is to be signed by the County Judge/Executive and the County Emergency Manager.

This certification is a required component of the EMA Special Project application process and affirms that federal funds will be used to supplement existing funds, and will not replace (supplant) funds that have been appropriated for the same purpose. Potential supplanting will be addressed in the application review as well as in the pre-award review, post-award monitoring, and the annual site visit.

Supplanting general definition: The act of a unit of government that reduces funds for an activity specifically because federal funds are available (or expected to be available) to fund that same activity. Supplanting is not permitted. Federal funds must be used to supplement existing State or local funds for program activities and may not replace funds that have been budgeted, appropriated, or allocated for the same purpose.

I certify I have read, understand, and agree to ensure that federal funds awarded under the Emergency Management Assistance Grant Program will not be used to supplant (replace) funds or other resources that would otherwise have been made available or previously budgeted for the county's emergency management program.

Applicant Name: HARDIN County

County Judge/Executive Name: Harry L. Berry

County Judge/Executive Signature: 

Date: 11Jan2022

County Emergency Manager Name: Bryce Skumate

County Emergency Manager Signature: 

Date: 12/14/21



Commonwealth of Kentucky CONTRACT

DOC ID NUMBER:			Version: 1	Record Date: 11/09/21
SC	095	2200000589		

Document Description:	2021 EMA Program Funds (EMPG 2021 Cycle)
Cited Authority:	KRS39A.030 Grant activity-Div of Emergency Mgmt
Reason for Modification:	

Issuer Contact:	
Name:	Angie Lawrence
Phone:	502-607-1741
E-mail:	angie.d.lawrence.nfg@mail.mil

Vendor Name:	Vendor No.	ZZMISCPROC
Multiple Provider	Vendor Contact	
	Name:	No Contact
702 Capitol Avenue	Phone:	XXX-XXX-XXXX
OMPS	Email:	
Frankfort		
	KY	40601

Effective From: 2021-10-01 Effective To: 2023-09-30

Line Item	Delivery Date	Quantity	Unit	Description	Unit Price	Contract Amount	Total Price
1	2021-10-11 00:00:00.0000	0.00000		2021 EMA Program Funds	\$0.000000	\$3,000,000.00	\$3,000,000.00

Extended Description:

1. FAIN # EMA-2021-EP-00012
2. Federal Award Date -September 2, 2021
3. The purpose of the EMPG Program is to provide Federal funds to states to assist state and local governments in preparing for all hazards, as authorized by Section 662 of the Post Katrina Emergency Management Reform Act (6 U.S.C. Section 762) and the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. Section 5121 et seq.) The FY 2020 EMPG will provide Federal funds to assist state and local emergency management agencies to obtain the resources required to support the National Preparedness Goals associated mission areas and core capabilities.
4. Name of Federal awarding agency - US Department of Homeland Security, Federal Emergency Management Agency Pass-through entity - Kentucky Emergency Management
5. CFDA # and Name - 97.042, Emergency Management Performance Grant Program (EMPG) \$5,525,910 (Federal Share)
6. Federal Award Period: October 1, 2021 through September 30, 2023

Shipping Information:	Billing Information:
DMA - Division of Emergency Management 100 Minuteman Pkwy Bldg 110	DMA - Division of Emergency Management 100 Minuteman Pkwy Bldg 110

Frankfort	KY	40601	Frankfort	KY	40601
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TOTAL CONTRACT AMOUNT:	\$3,000,000.00
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Memorandum of Agreement Terms and Conditions

This Memorandum of Agreement (MOA) is entered into by and between the Commonwealth of Kentucky, Department of Military Affairs (DMA), Division of Emergency Management (KYEM; together, the “Commonwealth” or “First Party) and one hundred and twenty (120) local jurisdictions of the Commonwealth (individually, the “Contractor” or “Second Party”) to establish an agreement for an Emergency Management Assistance (EMA) program funded by a federal Emergency Management Performance Grant (EMPG) program. This MOA is effective from October 1, 2021, through September 30, 2023.

Scope of Services:

This MOA implements elements of an EMPG program authorized by Catalog of Federal Domestic Assistance (CFDA) 97.042, and administered by the First Party. Approved support includes project scope and associated expenses identified in 2020 KYEM EMA Guidance, 2021 Federal Emergency Management Agency (FEMA) EMPG Funding Opportunity Announcement, and the FEMA Preparedness Grants Manual, February 2020.

One hundred twenty local jurisdictions within the Commonwealth of Kentucky (including, e.g. Adair, Allen, Anderson, Ballard, Barren, Bath, Bell, Boone, Bourbon, Boyd, Boyle, Bracken, Breathitt, Breckinridge, Bullitt, Butler, Caldwell, Calloway, Campbell, Carlisle, Carroll, Carter, Casey, Christian, Clark, Clay, Clinton, Crittenden, Cumberland, Daviess, Edmonson, Elliott, Estill, Fleming, Floyd, Fulton, Gallatin, Garrard, Grant, Graves, Grayson, Green, Greenup, Hancock, Hardin, Harlan, Harrison, Hart, Henderson, Henry, Hickman, Hopkins, Jackson, Jessamine, Johnson, Kenton, Knott, Knox, Larue, Laurel, Lawrence, Lee, Leslie, Letcher, and Lewis Counties; Lexington-Fayette Urban County Government; Lincoln, Livingston, Logan, Louisville Jefferson Metro Government, Lyon, McCracken, McCreary, McLean, Madison, Magoffin, Marion, Marshall, Martin, Mason, Meade, Menifee, Mercer, Metcalfe, Monroe, Montgomery, Morgan, Muhlenberg, Nelson, Nicholas, Ohio, Oldham, Owen, Owsley, Pendleton, Perry, Pike, Powell, Pulaski, Robertson, Rockcastle, Rowan, Russell, Scott, Shelby, Simpson, Spencer, Taylor, Todd, Trigg, Trimble, Union, Warren, Washington, Wayne, Webster, Whitley, Wolfe, and Woodford Counties; and the City of Frankfort) are contemplated individually, as eligible Contractors/Second Parties hereto as defined by KRS 45A.030 (9), and agree that they are willing, available, and qualified to perform the scope of work as detailed in this contract and as specifically outlined.

Performance Specifications

1. Successful completion by the Second Parties shall include the following deliverables:

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- (a) Within 15 days of the end of each month, the Second Party shall ensure that the local emergency management agency (LEMA) shall upload to www.kyemweb.com, (WEBEOC) a completed claim of reimbursement using KYEM Form 160-1, which shall be signed by the Local Emergency Management Director and Second Party jurisdiction's Treasurer. Supporting documentation shall be in accordance with KYEM Standard Operating Procedures - Reimbursement Guidelines for all Kentucky Emergency Management Grants.
- (b) The Second Party shall complete Quarterly Performance and Financial Reports within WebEOC on or before the following dates:

For Year One: First Quarter (October 1 through December 31) Due: January 15; Second Quarter (January 1 through March 31) Due: April 15; Third Quarter (April 1 through June 30) Due: July 15; and Fourth Quarter (July 1 through September 30) Due: October 15.

For Year Two: Fifth Quarter (October 1 through December 31) Due: January 15; Sixth Quarter (January 1 through March 31) Due: April 15; Seventh Quarter (April 1 through June 30) Due: July 15; and Eighth Quarter (July 1 through September 30) Due: October 15.

Quarterly reports shall be based on the Second Party's EMA work plan approved by KYEM. Additional quarterly reports may be required to be filed by the Second Party subject to extension of the period of performance.

- 2. The First Party shall notify a Second Party that has not expended all available funds to submit a revised work plan and budget. Second Parties are advised that failing to respond to such notification by the First Party may result in partial or complete reduction in funding in the sole discretion of the KYEM Director (the "Director.")
- 3. The Director shall review the performance and expenditure history of each Second Party quarterly and at any time, may reallocate funds necessary to meet the immediate need of the First Party or a Second Party.

Scope of Work

- (a) The Second Party shall accomplish goals and objectives as presented through the annual program guidance issued by the Director and the results of internal and external evaluations of capabilities by both federal and Commonwealth evaluations.
- (b) The First Party shall notify the Second Party in writing of allocation amounts made thereto, based upon program analysis. The Director may designate an increase or decrease in allocation amounts to a Second

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Party based upon the Second Party's performance and/or subject to program requirements.

- (c) Allocation amounts shall be pursuant to KRS 39C.010 and 39C.020; up to, but no more than, 50% of total local funds expended by the Second Party.
- (d) Second Party contributions shall be at least 50% of eligible expenses. Federal funds provide a maximum of 50% reimbursement of eligible expenses.
- (e) Payments shall be made in the form of Electronic Funds Transfer (EFT) to an account designated by the Second Party jurisdiction's fiscal officer.
- (f) Eligible grant reimbursements shall be made for the grant period of October 1, 2021, through September 30, 2023.
- (g) Additional allocations for projects shall begin on October 1, 2021, and conclude on September 30, 2023.
- (h) Each Second Party jurisdiction shall develop a Local Distribution Management Plan ("Plan") to be incorporated into their jurisdiction's Emergency Operations Plan. This plan shall include sections with information on the following seven (7) components: 1. Requirement Defining; 2. Resource Ordering; 3. Distribution Methods; 4. Inventory Management; 5. Transportation; 6. Staging and; 7. Demobilization. Second Parties shall ensure their jurisdiction uses a KYEM template to complete the Plan and shall report to the First Party on Plan progress on a quarterly basis.
- (i) The Second Party shall ensure its jurisdiction submits damage assessments to the State EOC on a quarterly basis using applications provided by KYEM.
- (a9) The Second Party shall report immediately before, during, and after a disaster event concerning the event's impact, impact to critical facilities, and needed resources. The Second Party shall use the reporting structure provided by KYEM when providing event information to the State EOC. Reporting structures are designed to highlight priority areas and interdependencies, focus attention on actions being taken, communicate coordination efforts towards stabilization, and integrate information.

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- (aa) Personnel funded pursuant to this MOA shall complete the following training within one (1) year of hire: (1) NIMS Training 100, 200, 700, 800; and (2) either the Emergency Management Institute Professional Development Series, or the Emergency Management Professionals Program Basic Academy.
- (ab) Personnel funded pursuant to this MOA shall participate in at least three (3) exercises annually. Exercises shall be designed using the Homeland Security Exercise and Evaluation Program. The Second Party shall ensure that personnel proof of participation is provided to the First Party by uploading said proof into the jurisdiction's WebEOC portal.
- (ac) To be considered for reimbursement, equipment must be deemed eligible for EMPG funding as detailed in the *FEMA Authorized Equipment List (AEL)*.

Pricing:

The Total contract amount is \$3,000,000.00, which is comprised of a 50% federal share, plus a 50% local share. Payments shall be made through a reimbursement process only, whereby the Second Party provides supporting documentation for expenditures to the First Party and may be reimbursed after review by the First Party. Second Party fees and expenses relative to the performance of services outlined in this MOA and any attachment(s) hereto shall not exceed the Total Order Amount set forth on the signature page of this MOA. Subject services and functions shall be performed during the term of this MOA. Payment by the First Party to the Second Party shall be made only after receipt of an appropriate, acceptable, and timely invoice, as so described in this Contract, and as submitted in written or electronic format to the First Party by the Second Party. The preferred method of payment will be through electronic funds transfer.

- (a) The Second Party shall be reimbursed for no other expenses than those detailed herein. All direct charges shall be documented to support the direct charging of the expense.
- (b) Where applicable:
 - i. Invoicing for fee: Original invoice(s) shall be documented and conform to the method prescribed by the First Party.
 - ii. Invoicing for travel expenses: Original or certified copies of receipts shall be submitted for airline tickets, motel bills, restaurant charges, rental car charges, and any miscellaneous expenses.

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- iii. Invoicing for miscellaneous expenses: Expenses shall be documented by original or certified copies.

No travel expenses shall be paid unless and except as authorized. Unless otherwise indicated, travel reimbursement shall be in accordance with 200 KAR 2:006. No travel time nor travel expenses shall be included within the Second Party's or any subcontractor's hourly rates.

Agency Standard Terms and Conditions – Pass-through Agreements

Revised August 2021

General

- (a) Extension and Amendment. The terms and conditions of this contract may be modified by written agreement of the Parties pursuant to KRS Chapter 45A and subject to the approval of the Secretary of the Finance and Administration Cabinet and/or the Legislative Research Commission's Government Contracts Review Committee.
- (b) Successors and Assigns. The Parties shall not assign any right herein without the written consent of the other party. Covenants made herein shall bind and inure to the benefit of any successors and assigns of the Parties whether or not expressly assumed or acknowledged by such successors or assigns.
- (c) Entire Contract. This document forms the entire contract between the Parties. Prior discussions and understandings concerning the scope and subject matter are superseded and incorporated into the express terms herein.
- (d) Severability. If any provision of this contract is held judicially invalid, the remainder shall continue in force and effect to the extent not inconsistent with such holding.
- (e) Breach of Contract. Breach or violation of Terms and Conditions shall be cause for termination of contract.
- (f) Waiver. Waiver of enforcement of any term or condition herein upon an event of breach shall not automatically extend to any other or future event of breach.
- (g) Change of Circumstances. The Parties shall promptly notify each other of any legal impediment, change of circumstances, pending litigation, or any other event or condition that may adversely affect their ability to carry out this contract.
- (h) Liability and Indemnity. Nothing in this contract shall be construed as an indemnification by or among the Parties for liabilities of the first or second party or any third person for property loss, damage, death, or personal injury ("Claims") arising out of and during the performance of this Contract.
- (i) Applicable Federal Laws and Regulations. This contract is incidental to the implementation of a federal grant program and accordingly, shall be governed by and construed according to federal law to the extent it may affect the right, remedies, and obligations of the United States.

Federal Grant Subrecipient Requirements

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To the extent not inconsistent with the express terms of this contract, 49 CFR 18, Uniform Administrative Requirements for Grants and Cooperative Contracts and 2 CFR 200, Subpart E, Cost Principles, are hereby incorporated by reference herein. Consistent therewith, the Commonwealth, as a pass-through entity for federal awards, shall monitor the performance of federal grant subrecipients (“Subrecipients”) and impose requirements upon Subrecipients in order for the Commonwealth to meet its responsibility to the federal awarding agency including without limitation, the identification of required financial and performance reports.

- (a) **Audits.** Subrecipients agree to comply with federally-mandated audits. The Commonwealth agrees to review required audits promptly.
1. Pursuant to 2 CFR 200.501, Subrecipients expending more than \$750,000 in federal grant monies per fiscal year shall conduct a single or program-specific audit for that fiscal year within nine (9) months of the end thereof and shall provide the final audit report to the Commonwealth within thirty (30) days of receipt.
 2. Pursuant to 2 CFR 200.512, Contractor(s) that are a governmental entity, institution of higher learning, or other nonprofit institution, shall procure an annual audit within nine (9) months of closing of the fiscal year and shall fully comply with Federal Audit Clearinghouse audit submission requirements. The Commonwealth shall access and review audit reporting packages and data collection forms from the Federal Audit Clearinghouse as soon as practicable after the required submission. Notwithstanding the foregoing, the Commonwealth may require Contractor(s) provide it with a copy of any required audit.
- (b) **Reporting.** Subrecipients agree to comply with federally-mandated reporting.
1. Pursuant to 2 CFR 200.112, Subrecipients shall disclose to the Commonwealth in writing and within five (5) days of having knowledge of any real or potential conflict of interest that may arise during the administration of the federal award. For this paragraph, “conflict of interest” is defined by applicable federal, state, and local statutes or regulations, and Subrecipients’ policies.
 2. Pursuant to 2 CFR 200.338, Subrecipients shall disclose to the federal awarding agency and to the Commonwealth in writing and within thirty (30) days of discovering of any violation of federal criminal law concerning fraud, bribery, or gratuity violations which may affect the federal award; failure to act in strict conformity with this section may result in the imposition of any remedy authorized thereby.
- (c) **Monitoring. The Commonwealth agrees to monitor Subrecipients.**
1. **Risk Analysis—2 CFR 200.331(b) requires the Commonwealth evaluate each Subrecipient’s risk of noncompliance with federal statutes, regulations, and the terms and conditions of the award for purposes of determining appropriate Subrecipient monitoring, which may include consideration of such factors as:**

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- a. **The Subrecipient's prior experience with the same or similar awards;**
 - b. **The results of previous audits, including whether or not the Subrecipient receives a single audit and the extent to which the same or similar award has been audited as a major program;**
 - c. **Whether Subrecipient has new personnel or new or substantially changed systems; and**
 - d. **The extent and results of federal awarding agency monitoring (e.g., if the Subrecipient also receives federal awards directly from a federal awarding agency.)**
2. Monitoring Activities—2 CFR 200.331(d) requires the Commonwealth, as the pass-through entity, monitor the activities of Sub-recipients to ensure performance goals are achieved and that awards are used for authorized purposes and in compliance with federal statutes, regulations, and the terms and conditions of the award. Monitoring of the Subrecipient must include:
- a. Reviewing financial and performance reports required by the First Party;
 - b. Following-up and ensuring that the Subrecipient takes timely and appropriate action on all deficiencies pertaining to the Federal award provided to the Subrecipient from the First Party detected through audits, on-site reviews, and other means; and
 - c. Issuing a management decision for audit findings pertaining to the Federal award provided to the Subrecipient from the First Party as required by 2 CFR §200.521 Management decision.
3. Monitoring Tools—Depending upon Commonwealth's assessment of risk posed by the Subrecipient, monitoring tools may be utilized to ensure accountability and compliance with program requirements and achievement of performance goals. Monitoring tools include but are not limited to:
- a. Providing Subrecipients with training and technical assistance on program-related matters;
 - b. Performing on-site reviews of the Subrecipient's program operations;
 - c. Arranging for agreed-upon-procedures engagements as described in 2 CFR §200.425 Audit services; and
 - d. Imposition of specific award conditions.
4. Subaward Conditions—2 CFR 200.331(c) requires the Commonwealth consider imposing specific subaward conditions upon Sub-recipients as needed, consistent with 2 CFR 200.207. The Commonwealth shall consider:
- a. Criteria set forth in 2 CFR 200.205, federal awarding agency review of risk posed by applicants;
 - b. Whether the applicant or recipient has a history of failing to comply with federal award terms and conditions;

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- c. Whether the applicant or recipient fails to meet expected performance goals as described in 2 CFR 200.210; and
 - d. Whether the applicant or recipient is not otherwise responsible.
 - 5. Additional Conditions—The Commonwealth may impose upon Sub-recipients additional federal award conditions.
 - a. Additional federal award conditions may include:
 - i. Requiring payment as reimbursement rather than advance payments;
 - ii. Withholding authority to proceed to the next phase until receipt of evidence of acceptable performance within a given period of performance;
 - iii. Requiring additional, detailed financial reports;
 - iv. Requiring additional project monitoring;
 - v. Requiring the non-federal entity obtain technical or management assistance; or
 - vi. Establishing additional prior approvals.
 - b. If the Commonwealth imposes an additional federal award condition upon Sub-recipients, the Commonwealth shall notify the Subrecipient in writing as to:
 - i. The nature of the additional requirements;
 - ii. The reason why the additional requirements are being imposed;
 - iii. The nature of the action needed to remove the additional requirement, if applicable;
 - iv. The time allowed for completing the actions if applicable, and
 - v. The method for requesting reconsideration of the additional requirements imposed.
 - 6. Removal of Conditions—Any specific condition imposed shall be promptly removed once the conditions prompting such condition has been corrected.
 - 7. Remedies For Noncompliant Sub-recipients—2 CFR 200.331(h) requires the Commonwealth consider taking enforcement action against Subrecipients who fail to comply with federal statutes, regulations or the terms and conditions of a federal award when the Commonwealth determines that noncompliance cannot be remedied by imposing additional conditions as described above. In accordance with 2 CFR 200.338, the Commonwealth may take one or more of the following actions, as appropriate in the circumstances:
 - a. Temporarily withhold cash payments pending correction of the deficiency by the non-Federal entity or more severe enforcement action.

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- b. Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.
- c. Wholly or partly suspend or terminate the Federal award.
- d. Recommend to the Federal awarding agency to initiate suspension or debarment proceedings as authorized under 2 CFR part 180 and Federal awarding agency.
- e. Withhold further Federal awards for the project or program.
- f. Take other remedies that may be legally available.

Subcontractor Agreements – Incorporation of Terms

The Parties agree that all subcontractors performing Activities in furtherance of this contract shall be bound by the terms and conditions herein. Contractor(s) further agrees to incorporate this contract by reference in any written agreement with a subcontractor performing Activities in furtherance of this contract.

Lobbying and Political Activity

No funds expended or reimbursed under this contract shall be used to influence, directly or indirectly, the introduction or modification of any federal or state legislation or the outcome of any federal, state or local election, referendum, or initiative.

- (a) Certification. Contractor(s) certify to the best of their knowledge and belief, that for the preceding contract period, if any, and for this current contract period:
 1. No federal funds have been paid or will be paid, by or on behalf of Contractor(s) to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative contract, and the extension, continuation, renewal, amendment or modification of any federal contract, grant, loan or cooperative contract;
 2. If any funds, other than federal funds, have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a member of Congress, an officer or employee of Congress, or an employee of a member of Congress in connection with this federal contract, grant, loan or cooperative contract, Contractor(s) shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying;"
 3. Contractor(s) shall require that the language of this certification be included in award documents for all sub-awards at all tiers, including subcontractors, sub-grants, and contracts under grants, loans, and cooperative contracts, and that all sub-recipients shall certify and disclose accordingly; and

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4. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction under section 31, U. S. C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for such failure.
- (b) Byrd Anti-Lobbying Amendment. 31 U.S.C. 1352 is incorporated by reference herein. Pursuant thereto, Contractor(s) that apply or bid for an award exceeding \$100,000 must file required certification. Each tier certifies to the tier above that it will not, and has not, used federal-appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining a federal contract, grant or other award. Each tier shall disclose lobbying with non-federal funds that take place in connection with obtaining a federal award. Disclosures under this paragraph shall be forwarded tier-to-tier up to the non-federal awarding agency.
- (c) The Hatch Act. Contractor(s) agrees to comply with 5 U.S.C. 1501 *et seq.*, the Hatch Act, and regulations promulgated thereunder including 5 CFR Part 151, limiting political activity of employees or officers of state or local governments whose employment is connected to an activity financed in whole or part with federal funds.

Information Ownership and Management

- (a) Unless otherwise stated herein, data and information shared or acquired by the Parties in furtherance of this contract ("Data") shall be and remain the sole property of the Commonwealth. Contractor(s) and their agents and assigns, shall not use Data for any other purpose not expressly authorized herein to extent permitted by state and federal law.
- (b) Contractor(s) agrees to comply with KRS 61.931 *et seq.*, Kentucky's Personal Information Security and Breach Investigation Procedures and Practices Act, (the "Act.") To the extent Contractor(s) receives Personal Information as defined by and in accordance with the Act, in furtherance of Activities performed hereunder, Contractor(s) shall secure and protect Personal Information by, and without limitation:
1. Utilizing security and breach investigation procedures appropriate to the nature of the Personal Information disclosed, reasonably designed to protect the Personal Information from unauthorized access, use, modification, disclosure, manipulation or destruction; and
 2. Notifying the Commonwealth of a security breach relating to Personal Information in the possession of practice or subcontractors without undue delay.

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Financial Management System

Contractor(s) agrees to establish and maintain a financial management system which shall provide accurate, current, and complete disclosure of financial reporting for Activities in accordance with reporting requirements set forth in this contract including, without limitation:

- (a) Records identifying the source and application of funds which shall contain information pertaining to federal and state funds received, obligations, unobligated balances (if applicable), assets, liabilities, expenditures and income;
- (b) Effective control over and accountability for all funds, property, and assets to safeguard and assure that they are used solely for authorized purposes under this contract;
- (c) Procedures for determining the reasonableness of costs in accordance with the terms and conditions of this contract; and
- (d) Accounting records supported by source documentation.

Drug-Free Work Place

- (a) Contractor(s) agree to comply with 41 U.S.C. 701 *et seq.*, the Drug-Free Work Place Act of 1988, and maintain a drug-free workplace.
- (b) Contractor(s) covenant and agree to comply with Final Rule, Government-Wide Requirements for Drug-Free Workplace (Grants), issued by the United States Office of Management and Budget, and any amendments thereto.

Environmental Standards

- (a) Contractor(s) agree that Activities performed in furtherance of this contract shall comply with the Clean Air Act, the Federal Water Pollution Control Act, the Resources Conservation and Recovery Act (RCRA), the Comprehensive Environmental Response, Compensation, and Liabilities Act (CERCLA), National Environmental Policy Act (NEPA), and any other applicable federal, state, or local environmental law, regulation, or policy.
- (b) Contractor(s) shall ensure that Activities shall not occur at a facility listed on the Environmental Protection Agency (EPA) list of violating facilities pursuant to 40 CFR 15 without the prior written agreement of the Commonwealth. Contractor(s) shall notify the Commonwealth immediately upon receipt of any communication from the EPA relating to performance of this contract.
- (c) Contractor(s) is encouraged to integrate National Environmental Policy Act compliance and related legislation as implemented under 44 CFR and 2 CFR 200, in the execution and administration of this contract.

Preference for U.S. Flag Carriers

Contractor(s) agree to comply with 46 U.S.C. 1241(b), and regulations issued thereunder to include 46 CFR 381, concerning the use of privately-owned United States flag commercial vessels.

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Debarment and Suspension

- (a) Contractor(s) shall not make any award or permit any award, subgrant, or contract at any tier to any party debarred, suspended, or excluded from or ineligible for participation in federal assistance programs under Executive Order 12549 and 12689, "Debarment and Suspension."
- (b) The Final Rule, Government-Wide Debarment and Suspension (Non-procurement), issued by the United States Office of Management and Budget is incorporated by reference and the Second Party covenants and agrees to comply with all the provision thereof, including any amendments to the Final Rule that may hereafter be issued.

Copeland "Anti-Kickback" Act

Contractor(s) agrees to comply with 40 U.S.C. 3145, the Copeland Anti-Kickback Act, and regulations promulgated thereunder including 29 CFR 3, whereby, it shall be unlawful to induce, by force, intimidation, threat, procuring dismissal from employment, or otherwise, any person employed in the construction or repair of public buildings or public works, finance in whole or in part by the United States, to give up any part of the compensation to which that person is entitled under a contract of employment.

Contract Work Hours and Safety Standards Act

Contractor(s) shall comply with 40 U.S.C. 3701 et seq., the Contract Work Hours and Safety Standards Act.

Patent Rights

The Patent Right Clause found at 37 CFR 401.12, is hereby incorporated by reference herein, which governs rights to inventions made by non-profit organizations and small business firms under government grants, contracts, and cooperative contracts.

Davis-Bacon Act

40 U.S.C. 3141 *et seq.* and regulations 29 CFR 5 are incorporated by reference herein. The Davis-Bacon Act requires contractors pay laborers and mechanics at prevailing wages determined by the Secretary of Labor, and to make payment at least once per week. The non-federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non-federal entity must report all suspected or reported violations to the federal awarding agency.

Procurement

- (a) Contractor(s) shall acquire goods and service consistent with KRS 45A and applicable federal standards and procedures including, without limitation, 2 CFR 200, 44 CFR, 49 CFR, and 32 CFR.

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- (b) Contractor(s) agrees to comply with 41 U.S.C. 10, the Buy American Act, the Memorandum of Understanding between the United States of America and the European Economic Community on Government Procurement, and the North American Free Trade Contract (NAFTA.)
- (c) Contractor(s) shall comply with the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, to procure:
 1. Items designated within Environmental Protection Agency (EPA) guideline 40 CFR 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000;
 2. Solid waste management services in a manner that maximizes energy and resource recovery; and
 3. Establish an affirmative procurement program for the procurement of recovered materials identified in EPA guidelines.

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**Memorandum of Agreement Standard Terms and Conditions
Revised December 2019**

1.00 Effective Date:

All Memorandum of Agreements are not effective until the Secretary of the Finance and Administration Cabinet or his authorized designee has approved the agreement and until the agreement has been submitted to the government contract review committee. However, in accordance with KRS 45A.700, memoranda of agreement in aggregate amounts of \$50,000 or less are exempt from review by the committee and need only be filed with the committee within 30 days of their effective date for informational purposes.

KRS 45A.695(7) provides that 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.

2.00 EEO Requirements

The Equal Employment Opportunity Act of 1978 applies to All State government projects with an estimated value exceeding \$500,000. The contractor shall comply with all terms and conditions of the Act.

3.00 Cancellation clause:

Both parties shall have the right to terminate and cancel this contract at any time not to exceed thirty (30) days' written notice served on the other party by registered or certified mail.

4.00 Funding Out Provision:

The state agency may terminate this agreement 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 agreement. The state agency shall provide the Contractor thirty (30) calendar day's written notice of termination of the agreement due to lack of available funding.

5.00 Reduction in Contract Worker Hours:

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

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service contracts. If under such authority the agency is required by Executive Order or otherwise to reduce contract hours, the agreement will be reduced by the amount specified in that document. If the contract funding is reduced, then the scope of work related to the contract may also be reduced commensurate with the reduction in funding. This reduction of the scope shall be agreeable to both parties and shall not be considered a breach of contract.

6.00 Access to Records:

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, 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 agreement for the purpose of financial audit or program review. The Contractor 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. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the agreement and shall be exempt from disclosure as provided in KRS 61.878(1)(c).

7.00 Violation of tax and employment laws:

KRS 45A.485 requires the Contractor and all subcontractors performing work under the agreement 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 corporate and utility tax, sales and use 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 and all subcontractors performing work under the agreement 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 and all subcontractors performing work under the agreement shall be in continuous compliance

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with the provisions of those statutes, which apply to their operations, and that their failure to reveal a final determination as described above, or failure to comply with the above statutes for the duration of the agreement shall be grounds for the Commonwealth's cancellation of the agreement and their disqualification from eligibility for future state contracts for a period of two (2) years.

[Check box section below need only be included for Contractors that are quasi-governmental entities or 501(c)3 non-profit entities.]

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). Attached is a list of such determination(s), which includes the KRS violated, the date of the final determination, and the state agency which issued the final determination.

8.00 Discrimination:

This section applies only to agreements disbursing federal funds, in whole or part, when the terms for receiving those funds mandate its inclusion. Discrimination (because of race, religion, color, national origin, sex, sexual orientation, gender identity, age, or disability) is prohibited. During the performance of this agreement, the Contractor agrees as follows:

The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, sexual orientation, gender identity 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, sexual orientation, gender identity, 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,

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available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

In all solicitations or advertisements for employees placed by or on behalf of the Contractor, the Contractor will, state that all qualified applicants will receive consideration for employment without regard to race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability.

The Contractor will send to each labor union or representative of workers with which he/she 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.

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.

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.

In the event of the Contractor's noncompliance with the nondiscrimination clauses of this agreement or with any of the said rules, regulations or orders, this agreement 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.

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

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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.