



Commonwealth of Kentucky

CONTRACT

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Document Description: 24EE-207 LFUCG - Election Equipment

Cited Authority: FAP111-44-00
Memorandum of Agreement

Reason for Modification:

Issuer Contact:Name: Jessica Wagoner
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Vendor Name: LEXINGTON FAYETTE URBAN CO GOVERNMENT 200 EAST MAIN STREET LEXINGTON KY 40507	Vendor No.: KY0033801	Vendor Contact: Name: Chad Hancock Phone: 8592583313 Email: chancock@lexingtonky.gov
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Effective From: 01/30/2024**Effective To:** 06/30/2024

Line Item	Delivery Date	Quantity	Unit	Description	Unit Price	Contract Amount	Total Price
1		0.00000		24EE-207 LFUCG - Election Equipment	\$0.000000	\$378,484.00	\$378,484.00

Extended Description:

Per 22RS HB1 (Acts Ch. 199), funds will be used for reimbursement of election equipment purchases for the County Clerk's Office. Project costs include, but not limited to, election equipment purchases.

Shipping Information:	Billing Information:
Department for Local Government - Office of Grants 100 Airport Rd, 3rd Fl Frankfort KY 40601	Department for Local Government - Office of Grants 100 Airport Rd, 3rd Fl Frankfort KY 40601

TOTAL CONTRACT AMOUNT:**\$378,484.00**

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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, Office of the Governor, Department for Local Government, Office of State Grants (“the Commonwealth”) and Lexington-Fayette Urban County Government (“the Contractor”) to establish an agreement for Election Equipment (“the Project”). The initial MOA is effective from **EFFECTIVE DATE** through June 30, 2024.

Scope of Services:

WHEREAS, the 2022 General Assembly enacted House Bill 1 authorizing to allocate projects through a local grant program; and

WHEREAS, the Contractor has submitted an application for House Bill 1 funds, and has agreed to serve as the administrator and beneficiary of the grant money from the Commonwealth for the project as provided in House Bill 1 under the terms and conditions enumerated herein and has further agreed to effectuate the completion of the Project in accordance with those terms and conditions and approved by the Commonwealth for the Project; and

WHEREAS, the Commonwealth has been duly designated to administer the local grant for the Project; and

WHEREAS, the Contractor has agreed to serve as the administrator and beneficiary of the grant money from the Commonwealth for the Project

NOW, THEREFORE, in consideration of the mutual covenants, commitments, and conditions contained herein, the Commonwealth and the Contractor agree as follows:

1. Obligations of the Commonwealth

The Commonwealth agrees, conditioned upon the timely performance by the Contractor of its obligations herein, to undertake the following obligations:

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A. The Commonwealth may, but is not required to, make periodic inspections of the Project and may send inspection reports to the Contractor. Deficiencies identified in an inspection report shall be corrected by the Contractor and their correction reported in writing to the Commonwealth within two weeks of receipt of the inspection report.

C. The Commonwealth will cooperate fully with the Contractor in order to facilitate the obligations set out in this memorandum.

D. The Commonwealth shall close out the Project upon satisfactory completion of the Project by the Contractor in accordance with the terms and conditions of this MOA and submission of an acceptable project completion report in the form prescribed by the Commonwealth.

2. Obligations of the Contractor

The Contractor agrees to undertake the following obligations:

A. The Contractor shall perform or cause to be performed all necessary acts to plan, design and complete the Project in accordance with the attached Scope of Work, which is hereby incorporated herein and made a part of this MOA.

B. The Contractor shall obtain all necessary permits, licenses, and approvals required for completion of the Project from the appropriate governmental entities.

C. The Contractor shall comply with all applicable federal and state statutes, executive orders, regulatory requirements, and policies.

D. The Contractor shall use its own procurement procedures that are compliant with all applicable state and local laws for all purchases of goods or services related to the Project.

E. The Contractor shall retain all records relating to the Project until the records are audited by the Commonwealth, or for three years after the Project has been closed by the Commonwealth, whichever occurs first.

F. A copy of the Contractor resolution authorizing the execution of this MOA is attached, which is incorporated into this MOA as though set forth fully herein.

G. The Contractor shall cooperate fully with the Commonwealth and provide any documentation requested by the Commonwealth in order to facilitate the obligations set out in this MOA.

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H. The Contractor shall be responsible for the expenditure of funds in accordance with House Bill 1 and all other applicable laws. Any unauthorized or improper expenditure of funds, or expenditure of funds other than in accordance with the terms of this MOA shall be deemed a default of this MOA by the Contractor. The Contractor shall repay the Commonwealth all funds that are not spent in accordance with this MOA and applicable laws.

I. The Contractor shall submit a project completion report to the Commonwealth in the form prescribed by the Commonwealth upon completion of the Project.

J. All Contractors, with the exception of Cities with a population of less than one thousand (1,000) people, or which receives and expends less than one hundred fifty thousand dollars (\$150,000) per fiscal year and has no long term debt, pursuant to KRS 91A.040, and Districts covered by KRS 65.065 or KRS 65A.010 to 65A.090, are subject to an independent annual audit conducted in accordance with generally accepted auditing standards, Government Auditing Standards, issued by the Comptroller General of the United States, the provisions of Office of Management and Budget Circular A-133, "Audits of State and Local Governments," if applicable, and the Audit Guide for Fiscal Court Audits issued by the Kentucky Auditor of Public Accounts. The audit report shall include a certification that the funds were expended for the purpose intended. A copy of the audit and certification of compliance shall be forwarded to the Commonwealth, Office of State Grants, no later than 18 months after the end of each fiscal year in which funds were received by a Contractor.

Those Cities and Districts referenced above shall be required to submit a copy of their financial statement and attestation engagement, when applicable, to the Commonwealth, Office of State Grants, no later than 18 months after the end of each fiscal year in which funds were received by a Contractor. Where a financial statement is not applicable, pursuant to the relevant statute, an audit shall be required.

3. Mutuality of Obligations

A. The parties agree that the obligations imposed upon them are for the benefit of the parties and the timely fulfillment of each, and every obligation in accordance with this MOA is necessary. The failure of the Contractor to fulfill its obligations under this MOA or the failure of any event to occur by a date established by this MOA shall constitute a breach of the MOA unless the obligation is waived or modified by written MOA of the parties.

B. In the event of default by the Contractor, including the failure to meet any time deadlines set out in this memorandum, the Commonwealth may declare this MOA void from its date of execution without further obligation to the Contractor and may commence appropriate legal or equitable action to enforce its rights under this MOA including action for recovery of funds expended hereunder.

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C. Except as may otherwise be provided herein, the parties to this MOA shall be solely responsible for any costs incurred in fulfilling their obligations under this MOA. If any legal action or other proceeding is successfully brought by the Commonwealth to enforcement this MOA, then the Commonwealth shall be entitled to recover from the Contractor, reasonable attorneys' fees, court costs and all expenses incurred in that action or proceeding, in addition to any other relief to which the Commonwealth may be entitled.

4. Miscellaneous Provisions

A. This MOA may be signed by each party upon a separate copy, and in such case one counterpart of this MOA shall consist of a sufficient number of such copies to reflect the signature of each party hereto. This MOA may be executed in two or more counterparts each of which shall be deemed an original, and it shall not be necessary in making proof of this MOA or the terms and conditions hereof to produce or account for more than one of such counterparts.

B. The headings set forth in this MOA are for convenience or reference only, and the words contained therein shall in no way be held to explain, modify, amplify, or aid in the interpretation, construction or meaning of the provisions of this MOA.

C. The terms and conditions of this MOA shall be binding upon and shall inure to the benefit of the successors and assigns, respectively, of the parties. This provision shall not be construed to permit assignment by any party of any of its rights and duties under this MOA which assignment shall be prohibited except with the prior written consent of all parties hereto.

D. This MOA sets forth the entire understanding of the parties with respect to the subject matter hereof, supersedes all existing MOAs among them concerning the subject matter hereof, and may be modified only by a written instrument duly executed by each of the parties hereto.

E. Performance of each of the terms and conditions of this MOA shall be carried out in a timely manner.

F. The parties agree that any suit, action, or proceeding with respect to this MOA may only be brought in or entered by, as the case may be, the courts of the Commonwealth of Kentucky situated in Frankfort, Franklin County, Kentucky or the United States District Court for the Eastern District of Kentucky, Frankfort Division.

All notices, requests, demands, waivers, and other communications given as provided in this MOA shall be in writing, and shall be addressed as follows:

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If to the Commonwealth: Department for Local Government
Office of State Grants
100 Airport Road, Third Floor
Frankfort, KY 40601

If to the Contractor: City of Lexington
200 East Main Street
Lexington, KY 40507
ATTN: Linda Gorton, Mayor

G. The Commonwealth may audit or review all documentation and records of the Contractor relating to this project pursuant to the provisions of KRS 45A.150.

H. The parties agree that this MOA is not entered into under the provisions of KRS 56.8161 et seq.

Pricing:

The Commonwealth shall, subject to the availability of appropriate funds, pay the Contractor a sum not to exceed THREE HUNDRED SEVENTY-EIGHT THOUSAND, FOUR HUNDRED EIGHTY-FOUR DOLLARS (\$378,484.00) in accordance with the submission of a Request for Disbursement form, as prescribed by the Commonwealth.

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**Memorandum of Agreement Standard Terms and Conditions
Revised January 2023**

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 Contractor 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 contract to reveal to the Commonwealth 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. Disclosure of any violations is required prior to the award of any state contract and throughout the duration the contract.

Failure to disclose violations, shall be grounds for the Commonwealth's disqualification of a contractor or subcontractor from eligibility for future state contracts for a period of two (2) years.

To comply with KRS 45A.485, the Contractor and all subcontractors performing work

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under this contract shall report any such final determination(s) of any violation(s) within the previous five (5) years to the Commonwealth by providing a list of the following information regarding any violation(s): (1) specific KRS violated, (2) date of any final determination of a violation, and (3) state agency which issued the final determination.

A list of any disclosures made prior to award of a contract shall be attached to the contract.

The Contractor affirms that it has not violated any of the provisions of the above statutes within the previous five (5) year period, aside from violations explicitly disclosed and attached to this contract. Contractor further affirms that it will (1) communicate the above KRS 45A.485 disclosure requirements to any subcontractors and (2) disclose any subcontractor violations it becomes aware of to the Commonwealth.

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, 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

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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 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,

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the contractor may request the United States to enter into such litigation to protect the interests of the United States.

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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:

	Commissioner, Department for Local Government
Signature	Title
Dennis Keene	
Printed Name	Date

2nd Party:

<i>Linda Gorton</i>	Mayor, City of Lexington
Signature	Title
Linda Gorton	<i>2/16/2024</i>
Printed Name	Date

Approved as to form and legality:

	Counsel, Department for Local Government
Signature	Title
Printed Name	Date
	Counsel, LFUCG
Signature	Title
Printed Name	Date

Project Number EE-207	Scope of Work	Type HB 1 CCEEG
Project Name Lexington-Fayette Urban County Government - Election Equipment		
Funded Amount \$378,484.00	Document	County Fayette
<p style="text-align: center;">Scope of Work</p> <p>Per 22RS HB1 (Acts Ch. 199), funds will be used for reimbursement of election equipment purchases for the County Clerk's Office. Project costs include, but not limited to, election equipment purchases.</p>		