

LEXINGTON

CONTRACT DOCUMENTS AND SPECIFICATIONS

DIVISION OF WATER QUALITY

FOR

2023 CAPACITY ASSURANCE PROGRAM FLOW MONITORING FIELD SERVICES

November 28, 2022

Bid No. 122-2022

PREPARED BY:

DIVISION OF WATER QUALITY
LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

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2023 CAPACITY ASSURANCE PROGRAM FLOW MONITORING FIELD SERVICES

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PART I

ADVERTISEMENT FOR BIDS

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ADVERTISEMENT FOR BIDS

1. INVITATION

Sealed proposals for the following work will be received by the Lexington-Fayette Urban County Government until **2:00 p.m.**, local time, **Wednesday, December 14** for furnishing all labor and/or materials and performing all work as set forth by this advertisement, conditions (general and special), specifications, and/or the drawings prepared by and for Lexington-Fayette Urban County Government, Division of Water Quality.

2. DESCRIPTION OF WORK

The project includes providing all construction supervision, labor, materials, tools, test equipment necessary for Bid #122-2022 **2023 Capacity Assurance Program Temporary Flow Monitoring.**

3. OBTAINING PLANS, SPECIFICATIONS, AND BID DOCUMENTS

Plans, Specifications, and Contract Documents may be obtained from <https://lexingtonky.ionwave.net>.

4. METHOD OF RECEIVING BIDS

Bids will be received from Prime Contracting firms on a **Line Item Unit Price Basis**, for total Project Area. Bids shall be submitted in the manner and subject to the conditions as set forth and described in the Instruction to Bidders and Special Conditions.

5. METHOD OF AWARD

The Contract, if awarded, will be to the lowest, qualified responsible bidder for the total project whose qualifications indicate the award will be in the best interest of the OWNER and whose bid/proposal complies with all the prescribed requirements. No Notice of Award will be given until the OWNER has concluded such investigation as deemed necessary to establish the responsibility, qualifications and financial ability of Bidders to do the work in accordance with the Contract Documents to the satisfaction of the OWNER within the time prescribed. The OWNER reserves the right to reject the Bid of any Bidder who does not pass such investigation to the OWNER's satisfaction. In analyzing Bids, the OWNER may take into consideration alternate and unit prices, if requested by the Bid forms.

6. BID WITHDRAWAL

No bidder may withdraw his bid for a period of sixty (60) calendar days after the closing date for receipt of bids. Errors and omissions will not be cause for withdrawal of bid without forfeit of bid bond. Bids may be withdrawn in person prior to the closing date of receipt of bids.

7. BID SECURITY

If the bid is \$50,000 or greater, bid shall be accompanied by a certified / cashier's check or bid

bond payable to the Lexington-Fayette Urban County Government in an amount not less than Five Percent (5%) of the base bid. Bid bond shall be executed by a Surety Company authorized to do business in the Commonwealth of Kentucky and countersigned by a licensed Kentucky Resident Agent, representing the Surety Company. Bid Bonds are not required for bids under \$50,000. A certified check or cashier's check are also acceptable forms of bid security.

8. RIGHT TO REJECT

The Purchasing Agent for the Lexington-Fayette Urban County Government reserves the right to reject any and all bids and to waive all informalities and/or technicalities where the best interest of the Lexington-Fayette Urban County Government may be served.

9. NOTIFICATION TO THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT FOR AFFIRMATIVE ACTION PLAN AND CURRENT WORKFORCE

The successful bidder must submit with their bid the following items to the Lexington-Fayette Urban County Government:

1. Affirmative Action Plan for his/her firm.
2. Current Workforce Analysis Form.

Failure to submit these items as required herein may result in disqualification of the Bidder from the award of the contract.

All submissions should be directed to:

Lexington-Fayette Urban County Government
Division of Purchasing
200 East Main Street, 3rd Floor, Room 338
Lexington, Kentucky 40507

10. NOTICE CONCERNING MWDBE GOAL

Notice of requirement for Affirmative Action to ensure Equal Employment Opportunities and Disadvantaged Business Enterprises (DBE) Contract participation. Disadvantaged Business Enterprises (DBE) consists of Minority-Owned Business Enterprises (MBE), **Veteran-Owned Small Businesses (VOSB)** and Woman-Owned Business Enterprises (WBE).

The Lexington-Fayette Urban County Government has set a goal that not less than ten percent (10%) of the total value of this Contract be subcontracted to Disadvantaged Business Enterprises, which is made up of MBEs and WBEs. The Lexington Fayette Urban County Government also has set a goal that not less than three percent (3%) of the total value of this Contract be subcontracted to Veteran-Owned Small Businesses. The goal for the utilization of Disadvantaged Business Enterprises as well as Veteran-Owned Small Businesses as subcontractors is a recommended goal. Contractor(s) who fail to meet such goal will be expected to provide written explanations to the Director of the Division of Purchasing of efforts they have made to accomplish the recommended goal, and the extent to which they are successful in accomplishing the recommended goal will be a consideration in the procurement process.

Depending on the funding source, other DBE goals may apply.

For assistance in locating Disadvantaged Business Enterprises Subcontractors contact:

Sherita Miller, Minority Business Enterprise Liaison
Division of Central Purchasing
Lexington-Fayette Urban County Government
200 East Main Street, 3rd Floor, Room 338
Lexington, Kentucky 40507
smiller@lexingtonky.gov

11. PRE-BID MEETING

A non-mandatory pre-bid meeting will be held at N/A AM/PM local time on _____ at _____
(date) (location)

12. CONSENT DECREE REQUIREMENTS

The work to be provided through this bid will assist the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT** (the “**OWNER**”) in successfully implementing the **PROJECT** and complying with any requirements which are related to the Consent Decree entered in a case styled *United States & Commonwealth of Kentucky v. Lexington Fayette Urban County Government*, United States District Court for the Eastern District of Kentucky, Civil Action No. 5:06-cv-386-KSF (the “**CONSENT DECREE**”). The services provided through this bid are hereinafter referred to as the **PROJECT**. **The primary goal of the PROJECT is to provide the OWNER with the technical support and/or construction services necessary to successfully meet the obligations and deadlines of the CONSENT DECREE.**

The **BIDDER** shall familiarize itself with and shall at all times comply with the **CONSENT DECREE**, and all federal, state and local laws, ordinances, and regulations that in any manner affect the **PROJECT**. Time is of the essence in the performance of this **PROJECT**. **BIDDER** is aware that the **OWNER** is subject to penalties for non-compliance with the **CONSENT DECREE** deadlines.

If delays result solely by reason of acts of the **BIDDER**, the **BIDDER** shall be held liable for any financial penalties incurred by the **OWNER** as a result of the delay, **including but not limited to those assessed pursuant to the CONSENT DECREE**. In the event the parties cannot mutually agree upon the cause(s) associated with delays in completing project deliverables. The **BIDDER** must immediately notify the **OWNER** in the event of such delay, and provide the **OWNER** a written action plan within five (5) business days on how it will attempt to resolve the delay.

In the event that **Bidder’s** delay or other nonperformance of its obligations hereunder results in the imposition of penalties against the **OWNER** pursuant to the **CONSENT DECREE**, or the **OWNER** otherwise suffers damage as a result of such delay or nonperformance, **BIDDER** shall be solely liable to **OWNER** for any and all such damages, including any costs and attorney’s fees.

An electronic version of the Consent Decree is available on the LFUCG web page for review or to print a copy at no charge.

13. STATE REVOLVING LOAN REQUIREMENTS

This project may be partially or entirely funded by the Kentucky Infrastructure Revolving Loan Fund.

Bidders must comply with Title VI of the Civil Rights Act of 1964, the Anti-Kickback Act, and the Contract Work Hours Standard Act.

Bidders must comply with the President's Executive Order No. 11246 as amended, which prohibits discrimination in employment regarding race, creed, color, sex, or national origin.

Successful bidder shall comply with 41 CFR 60-4, in regard to affirmative action, to insure equal opportunity to females and minorities and will apply the time tables and goal set forth in 40 CFR 60-4.

Successful bidder shall make positive efforts to use small, minority, women-owned, and disadvantaged businesses.

Attention of bidders is particularly called to the conditions of employment to be observed and minimum wage rates to be paid under the Contract, Section 3, Segregated Facility, Section 109 and E.O. 11246 and Title VI. Minority bidders are encouraged to bid.

Successful bidder is required to employ the six "Good Faith Efforts" as listed in EPA's Disadvantaged Business Enterprise Program when soliciting subcontractors and suppliers. Documentation of these efforts will be a required submittal prior to Contract Award.

The Contract Award will be made in writing to the lowest responsive and responsible bidder whose qualifications indicate the award will be in the best interest of the OWNER and whose bid/proposal complies with all the prescribed requirements. No Notice of Award will be given until the OWNER has concluded such investigation as deemed necessary to establish and responsibility, qualifications and financial ability of Bidders to do the work in accordance with the Contract Documents to the satisfactions of the OWNER within the time prescribed. The OWNER reserves the right to reject the Bid of any Bidder who does not pass such investigation to the OWNER's satisfaction. In analyzing Bids, the OWNER may take into consideration alternate and unit prices, if requested by the Bid forms.

END OF SECTION

PART II
INFORMATION FOR BIDDERS

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PART II

INFORMATION FOR BIDDERS

1. RECEIPT AND OPENING OF BIDS

The Lexington-Fayette Urban County Government (herein called the OWNER) invites bids from firms on the project described in the Advertisement for Bids. The OWNER will receive bids through Ionwave <https://lexingtonky.ionwave.net>. The OWNER may consider informal any bid not prepared and submitted in accordance with the provisions hereof and may waive any informalities or reject any and all bids. Any bid may be withdrawn prior to the scheduled time for the opening of bids or authorized postponement thereof. Any bid received after the time and date specified shall not be considered. No bidder may withdraw a bid within 60 days after the actual time and date of the bid opening, but OWNER may, in its sole discretion, release any bid and return the Bid Security prior to that date.

2. PREPARATION OF BID

Each bid must be submitted on the prescribed Form of Proposal. All bids must be submitted electronically in Ionwave <https://lexingtonky.ionwave.net> along with all required documents.

3. SUBCONTRACTS

The bidder is specifically advised that any person, firm, or other party to whom it is proposed to award a subcontract under this Contract must be acceptable to the OWNER. All proposed subcontractors must be identified on the Form of Proposal. Prior to the award of Contract, the OWNER or the OWNER'S representative will advise the CONTRACTOR of the acceptance and approval thereof or of any action necessary to be taken. Should any Subcontractor be rejected by the OWNER, the CONTRACTOR shall present a new name and/or firm to the OWNER at no change in the Contract Price.

4. QUALIFICATION OF BIDDER

The OWNER may make such investigations as the OWNER deems necessary to determine the ability of the bidder to perform the Work, and the bidder shall furnish to the OWNER all such information and data for this purpose as the OWNER may request. The OWNER reserves the right to reject any bid if the evidence submitted by, or investigation of, such bidder fails to satisfy the OWNER that such bidder is properly qualified to carry out the obligations of the Contract and to complete the Work contemplated therein. Conditional bids will not be accepted.

In evaluating Bids, OWNER shall consider the qualifications of the BIDDERS, whether or not the Bids comply with the prescribed requirements, and alternatives and unit prices, as requested. OWNER may consider maintenance requirements, performance data, and disruption or damage to private property. It is OWNER'S intent to accept alternatives, if requested by the bid forms, in the order in which they are listed in the Bid Form but OWNER may accept or decline them in any order or combination. The contract, if awarded, will be awarded to the lowest, qualified, responsible BIDDER based upon OWNER'S evaluation which indicates that the award will be in the best interest of OWNER and the general public.

In the event there is any question as to the bidder's qualifications and ability to complete the work, a final determination will be made in accordance with a fair evaluation by the Urban County Government of the above listed elements.

- A. If the OWNER requires filling out a detailed financial statement, the bidder may provide its current certified financial statement(s) for the required time interval.
- B. Corporate firms are required to be registered and in good standing with the requirements and provisions of the Office of the Secretary of State, Commonwealth of Kentucky.
- C. Good standing with Public Works Act - any CONTRACTOR and/or subcontractors in violation of any wage or work act provisions (KRS 337.510 to KRS 337.550) are prohibited by Statutory Act (KRS 337.990) from bidding on or working on any and all public works contracts, either in their name or in the name of any other company, firm or other entity in which he might be interested. No bid from a prime contractor in violation of the Act can be considered, nor will any subcontractor in violation of the Act be approved and/or accepted. The responsibility for the qualifications of the subcontractor is solely that of the prime contractor.
- D. Documents Required of CONTRACTOR - (1) A sworn statement signed by the President or owner of the Company regarding all current work in progress anywhere; (2) A document showing the percent of completion of each project and the total worth of each project; and (3) Documentation showing the percentage of the DBE employment levels on each project of the Bidder's current work force, and DBE participation levels for Subcontractors.
- E. Optional OWNER Requirements - The OWNER, at its discretion, may require the BIDDER/CONTRACTOR to provide: (1) a current detailed financial statement for a period including up to 3 prior years; (2) financial security or insurance in amounts and kinds acceptable to the OWNER to meet the financial responsibility requirements for the CONTRACTOR to indemnify the OWNER. (3) Additional information and/or DBE work force data, as well as DBE participation data.

Each bidder agrees to waive any claim it has or may have against the Owner, the Architect/Engineer, and their respective employees, arising out of or in connection with the administration, evaluation, or recommendation of any bid.

5. BID SECURITY

- A. Each bid must be accompanied by a bid bond prepared on a Form of Bid Bond and attached hereto, duly executed by the bidder as principal and having as surety thereon a surety company approved by the OWNER, in the amount of 5% of the bid. Such bid bond will be returned to the unsuccessful bidder(s) only upon written request to the Director of Central Purchasing within seven (7) days of opening of bids. Bid bond shall be made payable to the Lexington-Fayette Urban County Government. Bid security is not required for projects under \$50,000.
- B. Bonds shall be placed with an agent licensed in Kentucky with surety authorized to do business within the state. When the premium is paid for such coverage, the full commission payable shall be paid to such local agent who shall not divide such commission with any person other than a duly licensed resident local agent.

6. LIQUIDATED DAMAGES FOR FAILURE TO ENTER INTO CONTRACT

The successful bidder, upon his failure or refusal to execute and deliver the Contract and bonds required within ten (10) days after he has received notice of the acceptance of his bid, shall forfeit to the OWNER, as liquidated damages for such failure or refusal, the security deposited with his bid.

7. TIME OF COMPLETION AND LIQUIDATED DAMAGES

Bidder must agree to commence work on or before a date to be specified in a written "Notice to Proceed" from the OWNER and to fully complete the Project within the time as specified in the Contract. Bidder must agree also to pay \$ 400 per day as liquidated damages, or the sum as specified in the Contract for each consecutive calendar day thereafter as hereinafter provided in the General Conditions.

8. EXAMINATION OF CONTRACT DOCUMENTS AND SITE

- A. It is the responsibility of each Bidder before submitting a Bid, to (a) examine the Contract Documents thoroughly, (b) visit the site(s) to become familiar with local conditions that may affect cost, progress, performance or furnishing of the work, (c) consider Federal, State and Local laws and regulations that may affect cost, progress, performance or furnishing of the work, (d) study and carefully correlate Bidder's observations with the Contract Documents, and (e) notify Engineer of all conflicts, errors or discrepancies in the Contract Documents.
- B. Bidders should examine the requirements of section 4 of the General Conditions for information pertaining to subsurface conditions, underground structures, underground facilities, and availability of lands, easements, and rights-of-way. The completeness of data, presented in the Contract Documents, pertaining to subsurface conditions, underground structures, and underground facilities for the purposes of bidding or construction is not assured. The Bidder will, at Bidder's own expense, make or obtain any additional examinations, investigations, explorations, tests and studies and obtain any additional information and data which pertain to the physical conditions (surface and subsurface) which may affect cost, progress, performance or furnishing of the Work and which Bidder deems necessary to determine its Bid for

performing and furnishing the Work in accordance with the time, price, and other terms and conditions of the Contract Documents. On request in advance, OWNER will provide access to the site to conduct such explorations and tests as each Bidder deems necessary for submission of a bid. Bidder shall fill all holes, clean up and restore the site to its former condition upon completion of such explorations.

- C. The submission of a Bid will constitute an incontrovertible representation by the Bidder that Bidder has complied with every requirement of this paragraph 8; that without exception the Bid is premised upon furnishing and performing the Work required by the Contract Documents and such means, methods, techniques, sequences or procedures of construction as may be indicated in or required by the Contract Documents; and that the Contract Documents are sufficient in scope and detail to indicate and convey understanding of all terms and conditions for performance and furnishing of the Work.

9. ADDENDA AND INTERPRETATIONS

No interpretation of the meaning of the Contract Documents will be made to any bidder orally. Every request for such interpretation should be in writing addressed to the Director of Central Purchasing, who in turn will have an Addendum issued for the Lexington-Fayette Urban County Government, and to be given consideration must be received prior to the date fixed for the opening of bids. Any and all such interpretations and any supplemental instructions will be in the form of written addenda to the specifications. Acknowledgement of the receipt of addenda must be included with all submitted bids. Failure of any bidder to receive any such addendum or interpretation shall not relieve such bidder from any obligation under his bid as submitted. All addenda so issued shall become part of the Contract Documents.

10. SECURITY FOR FAITHFUL PERFORMANCE

- A. Simultaneously with his delivery of the executed Contracts, the CONTRACTOR shall furnish a surety bond or bonds as security for the faithful performance of this Contract and for payment of all persons performing labor on the Project under this Contract and furnishing materials in connection with this Contract, as specified in the General Conditions. The surety on such bond or bonds shall be a duly authorized surety company satisfactory to the OWNER and authorized to do business in the Commonwealth of Kentucky.
- B. All bonds required by this Contract and laws of this State shall be placed with agents licensed in the State of Kentucky. When the premium is paid for such coverage's, the full commission shall be paid to such local agent who shall not divide such commission with any person other than a duly licensed resident local agent.
- C. **Contractor shall use standard Performance and Payment Bond forms such as documents provided with this contract book or AIA form A312-1984 (or later). Each document will be for 100% of the Contract Bid Amount.**

11. POWER OF ATTORNEY

Attorney-in-fact who signs bid bonds or contract bonds must file with each bond a certified and effectively dated copy of their power of attorney.

12. TAXES AND WORKMEN'S COMPENSATION

The CONTRACTOR and subcontractor will be required to accept liability for payment of all payroll taxes, sales and use tax, and all other taxes or deductions required by local, state or federal law, such as old age pension, social security, or annuities measured by wages. Each shall carry Workmen's Compensation Insurance to the full amounts as required by Statutes and shall include the cost of all foregoing items in the proposal. The CONTRACTOR will not otherwise be reimbursed or compensated for such tax payments. The CONTRACTOR is urged to ascertain at his own risk his actual tax liability in connection with the execution or performance of his Contract.

13. LAWS AND REGULATIONS

The bidder's attention is directed to the fact that all applicable state laws, municipal ordinances, and the rules and regulations of all authorities having jurisdiction over construction of the Project shall apply to the Contract throughout, and they will be deemed to be included in the contract, the same as though herein written out in full.

14. EROSION AND SEDIMENT CONTROL AND PERMITS

The CONTRACTOR and Subcontractors performing work on projects on behalf of the OWNER shall also comply with all applicable federal, state, and local environmental regulations and all requirements and conditions set forth in "special" permits including but not limited to Corp of Engineers 404 permits, 401 Water Quality Certifications, Stream Crossing and Floodplain Encroachment Permits as described in Part 4 General Conditions Paragraph 5.17.

15. PREVAILING WAGE LAW AND MINIMUM HOURLY RATES

Federal or state wage rates and regulations, if required for this Project, will be as described in the Special Conditions.

16. AFFIRMATIVE ACTION PLAN

The successful Bidder must submit with their bid, the following items to the Urban County Government:

1. Affirmative Action Plan of the firm
2. Current Work Force Analysis Form
3. Good Faith Effort Documentation

4. List of Disadvantaged Business Enterprise Subcontractors and the Dollar Value of each Subcontract

A Work Force Analysis Form shall be submitted for each Contract. Failure to submit these items as required herein may result in disqualification of the Bidder from award of the Contract.

All submissions should be directed to:

Director, Division of Central Purchasing
Lexington-Fayette Urban County Government
200 East Main Street, Third Floor
Lexington, KY 40507

17. **CONTRACT TIME**

The number of calendar days within which the Work is to be substantially completed and ready for final payment (the Contract Time) is set forth in the Form of Proposal and the Agreement.

18. **SUBSTITUTE OR "OR-EQUAL" ITEMS**

The Contract, if awarded, will be on the basis of materials and equipment described in the Drawings or specified in the Specifications without consideration of possible substitute or "or-equal" items. Whenever it is indicated in the Drawings or specified in the Specifications that a substitute or "or-equal" item of material or equipment may be furnished or used by the CONTRACTOR if acceptable to the ENGINEER and OWNER, application for such acceptance will not be considered by the ENGINEER and OWNER until after the effective date of the Agreement. The procedure for submission of any such application by the CONTRACTOR and consideration by the ENGINEER and OWNER is set forth in the General Conditions.

19. **ALTERNATE BIDS**

Bidders shall submit alternate bids/proposals only if and when such alternate bids/proposals have been specifically requested in an Invitation for Bids. If alternate bids/proposals are requested in an Invitation for Bids, the form of submission of such alternate bid and the conditions under which such alternate bids will be considered for award of a contract will be established in the Invitation.

Any Bidder who submits a bid incorporating an alternate proposal when alternate bids/proposals have not been requested in the Invitation for Bids shall have his/her bid rejected as non-responsive.

Any Bidder who submits a bid incorporating two (2) or more prices for an item or groups of items (unless such method of pricing is requested in the Invitation for Bids), or which imposes conditions for acceptance other than those established in the Invitation for Bids, shall have their bid rejected as non-responsive.

20. SIGNING OF AGREEMENT

When OWNER gives a Notice of Award to the successful Bidder, it will be accompanied by the required number of unsigned counterparts of the Agreement with all other written Contract Documents attached. Within ten days thereafter, CONTRACTOR shall sign and deliver the required number of counterparts of the Agreement and attached documents to OWNER with the required Bonds, Certificate of Insurance, and Power of Attorney. The OWNER will deliver one fully signed counterpart to CONTRACTOR at such time as it has been signed by the Mayor.

21. ASSISTANCE TO BE OFFERED TO DISADVANTAGED BUSINESS ENTERPRISE (MWDBE) CONTRACTORS

A. Outreach for MWDBE(s)

The Lexington-Fayette Urban County Government (LFUCG) maintains a database of MWDBE contractors and organizations. When a LFUCG construction project is advertised for bidding, notices are sent to companies registered at <https://lexingtonky.idwave.net>. The notices describe the project and indicate the deadline for submitting bids.

If you wish to be added to the LFUCG MWDBE contractor database, please contact:

Sherita Miller, Minority Business Enterprise Liaison
Division of Central Purchasing
Lexington-Fayette Urban County Government
200 East Main Street, Room 338
Lexington, Kentucky 40507
smiller@lexingtonky.gov

B. Bid Bond Assistance for MWDBE(s)

For those MWDBE contractors who wish to bid on LFUCG project, bid bond assistance is available. This bid bond assistance is in the form of a “Letter of Certification” which is accepted by the LFUCG’s Division of Purchasing, in lieu of a bid bond. The “Letter of Certification” must be included in the bid package when it is submitted to the Division of Purchasing. The “Letter of Certification” will reference the specific project for which the bid is being submitted, and the time and date on which the bid is due. Bid bond assistance must be requested from the Lexington-Fayette Urban County Government’s Division of Central Purchasing.

C. Eligibility for Bid Bond Assistance for MWDBE(s)

In order to be eligible for any Bid bonding assistance, a MWDBE construction company must be owned or controlled at the level of 51% or more by a member or members of a minority group or females. Prior to receiving assistance, a statement providing evidence of ownership and control of the company by a member or members of a minority group or females must be signed by the Owner or corporate officer and by an attorney or accountant submitted to:

Sherita Miller, Minority Business Enterprise Liaison
Division of Central Purchasing
Lexington-Fayette Urban County Government
200 East Main Street, Room 338
Lexington, Kentucky 40507
smiller@lexingtonky.gov

D. MWDBE and Veteran Subcontractors

The LFUCG will, upon request, assist prime contractors in the procurement of eligible DBE subcontractors in an effort to achieve 10% minimum MWDBE and 3% minimum veteran goal.

For a list of eligible subcontractors, please contact:

Sherita Miller, Minority Business Enterprise Liaison
Division of Central Purchasing
Lexington-Fayette Urban County Government
200 East Main Street, Room 338
Lexington, Kentucky 40507
smiller@lexingtonky.gov



LEXINGTON

Bid 122-2022
Hydromax USA, LLC
Supplier Response

Event Information

Number: Bid 122-2022
Title: Capacity Assurance Program Temporary Flow Monitoring
Type: Competitive Bid
Issue Date: 11/29/2022
Deadline: 12/14/2022 02:00 PM (ET)

Contact Information

Contact: Brian Marcum
Address: Central Purchasing
Government Center Building
Room 338
200 East Main Street
Lexington, KY 40507
Phone: (859) 2583320
Fax: (859) 2583322
Email: brianm@lexingtonky.gov

Hydromax USA, LLC Information

Contact: David Hamberlin
Address: 3700 River Walk Dr. Suite 145
Flower Mound, TX 75208
Phone: (812) 708-0886
Email: david.hamberlin@hydromaxusa.com

ONLY ONLINE BIDS WILL BE ACCEPTED! By submitting your response, you certify that you are authorized to represent and bind your company and that you agree to all bid terms and conditions as stated in the attached bid/RFP/RFQ/Quote/Auction documents.

David Hamberlin
Signature

david.hamberlin@hydromaxusa.com
Email

Submitted at 12/14/2022 12:42:02 PM (ET)

Response Attachments

LFUCG 2023 Flow Monitoring Bid Forms - secured notarized.pdf

Hydromax USA LFUCG 2023 Flow Monitoring RFP Response

Bid Lines

1	Installation, Removal & Calibration of Temporary Flow Meter	Quantity: <u>36</u> UOM: <u>Each</u>	Unit Price: <input type="text" value="\$1,000.00"/>	Total: <input type="text" value="\$36,000.00"/>
2	Operation & Maintenance of Temporary Flow Meter	Quantity: <u>144</u> UOM: <u>Meter-month</u>	Price: <input type="text" value="\$690.00"/>	Total: <input type="text" value="\$99,360.00"/>
3	Installation, Removal & Calibration of Temporary Rain Gage	Quantity: <u>9</u> UOM: <u>Each</u>	Unit Price: <input type="text" value="\$400.00"/>	Total: <input type="text" value="\$3,600.00"/>
4	Operation & Maintenance of Temporary Rain Gage	Quantity: <u>36</u> UOM: <u>Gage-month</u>	Price: <input type="text" value="\$272.00"/>	Total: <input type="text" value="\$9,792.00"/>
5	Monthly Data Packet	Quantity: <u>4</u> UOM: <u>Each</u>	Unit Price: <input type="text" value="\$644.00"/>	Total: <input type="text" value="\$2,576.00"/>
6	Final Report	Quantity: <u>1</u> UOM: <u>Each</u>	Unit Price: <input type="text" value="\$1,500.00"/>	Total: <input type="text" value="\$1,500.00"/>
7	Kickoff/Progress Meetings	Quantity: <u>4</u> UOM: <u>Each</u>	Unit Price: <input type="text" value="\$644.00"/>	Total: <input type="text" value="\$2,576.00"/>

Response Total: \$155,404.00

PART III

Invitation to Bid No. 122-2022

2023 Capacity Assurance Program Flow Monitoring Field Services

1. FORM OF PROPOSAL

Place: Lexington, Kentucky

Date: 12-14-2022

The following Form of Proposal shall be followed exactly in submitting a proposal for this Work.

This Proposal Submitted by Hydromax USA, LLC

3700 River Walk Dr., Suite 145, Flower Mound, TX 75028
(Name and Address of Bidding Contractor)

(Hereinafter called "Bidder"), organized and existing under the laws of the State of Indiana, doing business as Hydromax USA, LLC
"a corporation," "a partnership", or an "individual" as applicable.

To: Lexington-Fayette Urban County Government
(Hereinafter called "OWNER")
Office of the Director of Purchasing
200 East Main Street, 3rd Floor
Lexington, KY 40507

Gentlemen:

The Bidder, in compliance with your Invitation for Bids for 122-2022 having examined the Plans and Specifications with related documents, having examined the site for proposed Work, and being familiar with all of the conditions surrounding the construction of the proposed Project, including the availability of materials and labor, hereby proposes to furnish all labor, materials, and supplies, and to construct the Project in accordance with the Contract Documents, within the time set forth therein, and at the lump sum and/or unit prices stated hereinafter. These prices are to cover all expenses incurred in performing the Work required under the Contract Documents, of which this proposal is a part. The OWNER will issue work orders for work to be performed under this Contract.

BIDDER hereby agrees to commence work under this contract on or before a date to be specified in the Notice to Proceed and to fully complete the project within the time provided in the Purchase Order or Work Orders issued by the OWNER. BIDDER further agrees to pay liquidated damages, the sum of \$ 400 for each consecutive calendar day thereafter.

The Bidder hereby acknowledges receipt of the following addenda:

Addendum No. ____ Date _____

Addendum No. ____ Date _____

Addendum No. ____ Date _____

Addendum No. ____ Date _____

Addendum No. ____ Date _____

Addendum No. ____ Date _____

Addendum No. ____ Date _____

Addendum No. ____ Date _____

Insert above the number and the date of any Addendum issued and received. If none has been issued and received, the word "NONE" should be inserted.

2. LEGAL STATUS OF BIDDER

Bidder Hydromax USA, LLC

Date 12-14-2022

* 1. A corporation duly organized and doing business under the laws of the State of Indiana, for whom Shane Majetich, bearing the official title of Vice President, whose signature is affixed to this Bid/Proposal, is duly authorized to execute contracts.

* 2. A Partnership, all of the members of which, with addresses are: (Designate general partners as such)

N/A

* 3. An individual, whose signature is affixed to this Bid/Proposal (please print name)

N/A

*(The Bidder shall fill out the appropriate form and strike out the other two.)

3. **BIDDERS AFFIDAVIT**

Comes the Affiant, Shane Majetich, and after being first duly sworn, states under penalty of perjury as follows:

1. His/her name is Shane Majetich and he/she is the individual submitting the bid or is the authorized representative of Hydromax USA, LLC, the entity submitting the bid (hereinafter referred to as "Bidder").
2. Bidder will pay all taxes and fees, which are owed to the Lexington-Fayette Urban County Government at the time the bid is submitted, prior to award of the contract and will maintain a "current" status in regard to those taxes and fees during the life of the contract.
3. Bidder will obtain a Lexington-Fayette Urban County Government business license, if applicable, prior to award of the contract.
4. Bidder has authorized the Division of Central Purchasing to verify the above-mentioned information with the Division of Revenue and to disclose to the Urban County Council that taxes and/or fees are delinquent or that a business license has not been obtained.
5. Bidder has not knowingly violated any provision of the campaign finance laws of the Commonwealth of Kentucky within the past five (5) years and the award of a contract to the Bidder will not violate any provision of the campaign finance laws of the Commonwealth.
6. Bidder has not knowingly violated any provision of Chapter 25 of the Lexington-Fayette Urban County Government Code of Ordinances, known as the "Ethics Act."
7. Bidder acknowledges that "knowingly" for purposes of this Affidavit means, with respect to conduct or to circumstances described by a statute or ordinance defining an offense, that a person is aware or should have been aware that his conduct is of that nature or that the circumstance exists.

Further, Affiant sayeth naught.

Shane Majetich
(Affiant)

STATE OF Indiana

COUNTY OF Vanderburgh

The foregoing instrument was subscribed, sworn to and acknowledged before me by

Shane Majetich on this the 12 day of December, 2025.

My Commission expires: September 07, 2025

Debra R Herrenbruck

NOTARY PUBLIC, STATE AT LARGE

Debra R Herrenbruck

P-5



4. BID SCHEDULE – SCHEDULE OF VALUES

The Bidder agrees to perform all the Work described in the Specifications and shown on the Plans for the following proposed lump sum and/or unit prices, if applicable, which shall include the furnishing of all labor, materials, supplies, equipment and/or vehicle usage, services, all items of cost, overhead, taxes (federal, state, local), and profit for the Contractor and any Subcontractor involved, within the time set forth herein. If unit prices are applicable, Bidder must make the extensions and additions showing the total amount of bid.

Form of proposal must include unit bid prices written in words, unit price written in numbers and total amount bid (unit price x quantity) per line item OR bid may be considered non-responsive. In case of price discrepancy, unit bid price written in words will prevail followed by unit price written in numbers then total amount bid per line item.

If a discrepancy between the unit price and the item total exists, the unit price prevails except:

If the unit price is illegible, omitted, or the same as the item total, item total prevails and the unit price is the quotient of the item total and the quantity.

If the unit price and the item total are illegible or are omitted, the bid may be determined nonresponsive. If a lump sum total price is illegible or is omitted, the bid may be determined nonresponsive.

For a lump sum based bid, the item total is the bid amount the Division uses for bid comparison.

For a unit price based bid, the sum of the item totals is the bid amount the Division uses for bid comparison.

The LFUCG’s decision on the bid amount is final.

The contract, if awarded, will be on the basis of materials and equipment specified in the specifications without consideration of possible substitute or “or equal” items.

The estimated quantities of items of unit price work are not guaranteed and are solely for the purpose of comparison of bids and determining an initial Contract price. Determination of the actual quantities and classification of unit price work performed by the Contractor will be made by the Engineer in accordance with the General Conditions.

Item No.	Description w/Unit Bid Price Written in Words	Estimated Quantity	Unit	Unit Price	Total Bid Amount
1.	Installation, Removal & Calibration of Temporary Flow Meter for _____ Dollars and _____ Cents (per Each)	36	Each	\$ Ionwave	\$ Ionwave
2.	Operation & Maintenance of Temporary Flow Meter for _____ Dollars and _____ Cents (per Meter-month)	144	Meter-month	\$ Ionwave	\$ Ionwave
3.	Installation, Removal & Calibration of Temporary Rain Gage for _____ Dollars and _____ Cents (per Each)	9	Each	\$ Ionwave	\$ Ionwave

Item No.	Description w/Unit Bid Price Written in Words	Estimated Quantity	Unit	Unit Price	Total Bid Amount
4.	Operation & Maintenance of Temporary Rain Gage for _____ Dollars and _____ Cents (per Gage-month)	36	Gage-month	\$ Ionwave	\$ Ionwave
5.	Monthly Data Packet for _____ Dollars and _____ Cents (per Each)	4	Each	\$ Ionwave	\$ Ionwave
6.	Final Report for _____ Dollars and _____ Cents (per Each)	1	Each	\$ Ionwave	\$ Ionwave
7.	Kickoff/Progress Meetings for _____ Dollars and _____ Cents (per Each)	4	Each	\$ Ionwave	\$ Ionwave

TOTAL OF ALL BID PRICES FOR Submit in Ionwave Project (Items 1 through 30) in words and figures. In case of discrepancy, the amount shown in words will govern.

Submit in Ionwave
_____ (\$ _____).

The quantities indicated in the Bid Schedule reflect those anticipated for the 2023 monitoring season. Estimated quantities may change after the contract is awarded. Final quantities will be at the OWNER's discretion. The CONTRACTOR shall specify the unit price for each item in the Bid Schedule without regard to quantity. The CONTRACTOR will not be permitted to alter the unit price identified in the Bid Schedule for changes in estimated quantities for any Item No.

Additional information regarding the preliminary monitoring sites for 2023 is provided in Section 4.06 of the Technical Specifications.

Monitoring equipment used to perform the work shall be furnished by the CONTRACTOR. Ownership of monitoring equipment remains with the CONTRACTOR. No equipment is to be provided to the OWNER as part of this contract.

Submitted by:

Hydromax USA, LLC
Firm

3700 River Walk Dr. Suite 145
Address

Flower Mound, TX 75028
City, State & Zip

***Bid must be signed:
(original signature)***

Vice President 
Signature of Authorized Company Representative – Title

Shane Majetich
Representative/s Name (Typed or Printed)

813-305-6610
Area Code – Phone – Extension *Fax #*

shane.majetich@hydromaxusa.com
E-Mail Address

OFFICIAL ADDRESS:

Same as Above

(Seal if Bid is by Corporation)



By signing this form you agree to ALL terms, conditions, and associated forms in this bid package

5. **STATEMENT OF BIDDER'S QUALIFICATIONS**

The following statement of the Bidder's qualifications is required to be filled in, executed, and submitted with the Proposal:

- 1. Name of Bidder: Hydromax USA, LLC
- 2. Permanent Place of Business: 3700 River Walk Dr. Suite 145, Flower Mound, TX 75028
- 3. When Organized: 2003
- 4. Where Incorporated: Indiana
- 5. Construction Plant and Equipment Available for this Project:
Hach FL900's and HOBO Rain Gauges

(Attach Separate Sheet If Necessary)

6. Financial Condition:

If specifically requested by the OWNER, the apparent low Bidder is required to submit its latest three (3) years audited financial statements to the OWNER'S Division of Central Purchasing within seven (7) calendar days following the bid opening.

7. In the event the Contract is awarded to the undersigned, surety bonds will be furnished by:

— Berkley Insurance Company (Surety)

Signed: *William Reidinger* (Representative of Surety)
William Reidinger, Attorney-in-Fact

8. The following is a list of similar projects performed by the Bidder: (Attach separate sheet if necessary).

NAME

LOCATION

CONTRACT SUM

<u>LFUCG 2021</u>	<u>Lexington, KY</u>	<u>\$275,000</u>
<u>LFUCG 2020</u>	<u>Lexington, KY</u>	<u>\$160,000</u>
<u>LFUCG 2018</u>	<u>Lexington, KY</u>	<u>\$260,000</u>
<u>LFUCG 2017</u>	<u>Lexington, KY</u>	<u>\$100,000</u>
<u> </u>	<u> </u>	<u> </u>

9. The Bidder has now under contract and bonded the following projects:

<u>NAME</u>	<u>LOCATION</u>	<u>CONTRACT SUM</u>
<u>County of Henrico</u>	<u>Henrico, VA</u>	<u>\$242,500</u>
<u>Orange County</u>	<u>Orange County, FL</u>	<u>\$2,812,270</u>
<u>City of Forney</u>	<u>Forney, TX</u>	<u>\$87,500</u>
<u>KCMO</u>	<u>Kansas City, MO</u>	<u>\$750,000</u>
<u>City of Houston</u>	<u>Houston, TX</u>	<u>\$500,000</u>

10. List Key Bidder Personnel who will work on this Project.

<u>NAME</u>	<u>POSITION DESCRIPTION</u>	<u>NO. OF YEARS WITH BIDDER</u>
<u>Alex Sutton</u>	<u>Project Manager</u>	<u>11</u>
<u>Blaine Myers</u>	<u>Data Analyst Manager</u>	<u>8</u>
<u>Ryan Easterday</u>	<u>Field Technician</u>	<u>8</u>
<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>

11. DBE Participation on current bonded projects under contract:

<u>SUBCONTRACTORS (LIST)</u>	<u>PROJECT (SPECIFIC TYPE)</u>	<u>DBE</u>	<u>% of WORK</u>
<u>ACE Staffing Inc.</u>	<u>Orange County/ Staffing</u>	<u>MBE</u>	<u>5%</u>
<u>TREKK Design Group</u>	<u>KCMO/ CCTV</u>	<u>WBE</u>	<u>15%</u>
<u>Taliaferro & Brown</u>	<u>KCMO/ MH Locate</u>	<u>MBE</u>	<u>5%</u>
<u>TLC Engineering</u>	<u>Houston/ Staffing</u>	<u>MBE</u>	<u>11%</u>
<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>	<u> </u>
<u> </u>	<u> </u>	<u> </u>	<u> </u>

(USE ADDITIONAL SHEETS IF NECESSARY)

- We acknowledge that, if we are the apparent low Bidder, we may be required to submit to the OWNER within 7 calendar days following the Bid Opening, a sworn statement regarding all current work on hand and under contract, and a statement on the OWNER'S form of the experience of our officers, office management and field management personnel. Additionally, if requested by the OWNER, we will within 7 days following the request submit audited financial statements and loss history for insurance claims for the 3 most recent years (or a lesser period stipulated by the OWNER).

6. LIST OF PROPOSED SUBCONTRACTORS

The following list of proposed subcontractors is required by the OWNER to be executed, completed and submitted with the BIDDER'S FORM OF PROPOSAL. All subcontractors are subject to approval of the Lexington-Fayette Urban County Government. Failure to submit this list completely filled out may be cause for rejection of bid.

<u>BRANCH OF WORK - LIST EACH Work</u>	<u>SUBCONTRACTOR</u>	<u>DBE</u>	<u>% of</u>
<u>MAJOR ITEM</u> Such as: Grading, bituminous paving, concrete, seeding and protection, construction staking, etc.		<u>Yes/No</u>	
1. N/A _____	Name: _____	_____	_____
	Address: _____		
2. _____	Name: _____	_____	_____
	Address: _____		
3. _____	Name: _____	_____	_____
	Address: _____		
4. _____	Name: _____	_____	_____
	Address: _____		
5. _____	Name: _____	_____	_____
	Address: _____		
6. _____	Name: _____	_____	_____
	Address: _____		
7. _____	Name: _____	_____	_____
	Address: _____		

(Attach additional sheet(s) if necessary.)

Because of the special nature of this work as well as the skill sets needed to complete this work, we will be self performing all aspects of the project.



LFUCG MWDBE PARTICIPATION FORM

Bid/RFP/Quote Reference # 122-2022

The MWDBE and/or Veteran subcontractors listed have agreed to participate on this Bid/RFP/Quote. If any substitution is made or the total value of the work is changed prior to or after the job is in progress, it is understood that those substitutions must be submitted to Central Purchasing for approval immediately. **Failure to submit a completed form may cause rejection of the bid.**

Hydromax USA will be self performing all aspects of the project.

MWDBE Company, Name, Address, Phone, Email	Work to be Performed	Total Dollar Value of the Work	% Value of Total Contract
1. N/A			
2.			
3.			
4.			

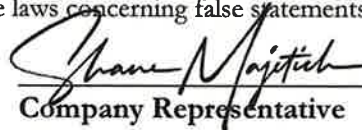
The undersigned company representative submits the above list of MWDBE firms to be used in accomplishing the work contained in this Bid/RFP/Quote. Any misrepresentation may result in the termination of the contract and/or be subject to applicable Federal and State laws concerning false statements and false claims.

Hydromax USA

Company

12/12/22

Date



Company Representative

Vice President

Title



LFUCG MWDBE SUBSTITUTION FORM

Bid/RFP/Quote Reference # 122-2022

The substituted MWDBE and/or Veteran subcontractors listed below have agreed to participate on this Bid/RFP/Quote. These substitutions were made prior to or after the job was in progress. These substitutions were made for reasons stated below and are now being submitted to Central Purchasing for approval. By the authorized signature of a representative of our company, we understand that this information will be entered into our file for this project.

SUBSTITUTED MWDBE Company Name, Address, Phone, Email	MWDBE Formally Contracted/ Name, Address, Phone, Email	Work to Be Performed	Reason for the Substitution	Total Dollar Value of the Work	% Value of Total Contract
1. N/A					
2.					
3.					
4.					

The undersigned acknowledges that any misrepresentation may result in termination of the contract and/or be subject to applicable Federal and State laws concerning false statements and false claims.

Hydromax USA
Company

12/12/22
Date


Company Representative

Vice President
Title

Due to the specialized nature of the field work and data Hydromax USA will be self performing all aspects of the project.



MWDBE QUOTE SUMMARY FORM

Bid/RFP/Quote Reference # 122-2022

The undersigned acknowledges that the minority and/or veteran subcontractors listed on this form did submit a quote to participate on this project. **Failure to submit a completed form may cause rejection of the bid.**

Company Name Hydromax USA	Contact Person Shane Majetich
Address/Phone/Email 3700 River Walk Dr., Suite 145, Flower Mound, TX 75028 shane.majetich@hydromaxusa.com	Bid Package / Bid Date 122-2022 / 12-14-2022

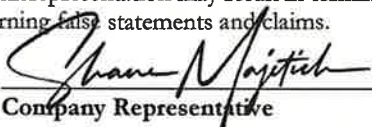
MWDBE Company Address	Contact Person	Contact Information (work phone, Email, cell)	Date Contacted	Services to be performed	Method of Communication (email, phone meeting, ad, event etc)	Total dollars \$\$ Do Not Leave Blank (Attach Documentation)	MBE * AA HA AS NA Female	Veteran
N/A								

(MBE designation / AA=African American / HA= Hispanic American/AS = Asian American/Pacific Islander/ NA= Native American)

The undersigned acknowledges that all information is accurate. Any misrepresentation may result in termination of the contract and/or be subject to applicable Federal and State laws concerning false statements and claims.

Hydromax USA
Company

12/12/22
Date


Company Representative

Vice President
Title

Due to the specialized nature of the field work and data Hydromax USA will be self performing all aspects of the project.

LFUCG STATEMENT OF GOOD FAITH EFFORTS

Bid/RFP/Quote # 122-2022

By the signature below of an authorized company representative, we certify that we have utilized the following Good Faith Efforts to obtain the maximum participation by MWDBE and Veteran-Owned business enterprises on the project and can supply the appropriate documentation.

No Advertised opportunities to participate in the contract in at least two (2) publications of general circulation media; trade and professional association publications; small and minority business or trade publications; and publications or trades targeting minority, women and disadvantaged businesses not less than fifteen (15) days prior to the deadline for submission of bids to allow MWDBE firms and Veteran-Owned businesses to participate.

No Included documentation of advertising in the above publications with the bidders good faith efforts package

No Attended LFUCG Central Purchasing Economic Inclusion Outreach event

No Attended pre-bid meetings that were scheduled by LFUCG to inform MWDBEs and/or Veteran-Owned Businesses of subcontracting opportunities

No Sponsored Economic Inclusion event to provide networking opportunities for prime contractors and MWDBE firms and Veteran-Owned businesses

No Requested a list of MWDBE and/or Veteran subcontractors or suppliers from LFUCG and showed evidence of contacting the companies on the list(s).

No Contacted organizations that work with MWDBE companies for assistance in finding certified MWDBE firms and Veteran-Owned businesses to work on this project. Those contacted and their responses should be a part of the bidder's good faith efforts documentation.

No Sent written notices, by certified mail, email or facsimile, to qualified, certified MWDBEs soliciting their participation in the contract not less than seven (7) days prior to the deadline for submission of bids to allow them to participate effectively.

No Followed up initial solicitations by contacting MWDBEs and Veteran-Owned businesses to determine their level of interest.

No Provided the interested MWDBE firm and/or Veteran-Owned business with adequate and timely information about the plans, specifications, and requirements of the contract.

No Selected portions of the work to be performed by MWDBE firms and/or Veteran-Owned businesses in order to increase the likelihood of meeting the contract goals. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate MWDBE and Veteran participation,

even when the prime contractor may otherwise perform these work items with its own workforce

No Negotiated in good faith with interested MWDBE firms and Veteran-Owned businesses not rejecting them as unqualified without sound reasons based on a thorough investigation of their capabilities. Any rejection should be so noted in writing with a description as to why an agreement could not be reached.

No Included documentation of quotations received from interested MWDBE firms and Veteran-Owned businesses which were not used due to uncompetitive pricing or were rejected as unacceptable and/or copies of responses from firms indicating that they would not be submitting a bid.

No Bidder has to submit sound reasons why the quotations were considered unacceptable. The fact that the bidder has the ability and/or desire to perform the contract work with its own forces will not be considered a sound reason for rejecting a MWDBE and/or Veteran-Owned business's quote. Nothing in this provision shall be construed to require the bidder to accept unreasonable quotes in order to satisfy MWDBE and Veteran goals.

No Made an effort to offer assistance to or refer interested MWDBE firms and Veteran-Owned businesses to obtain the necessary equipment, supplies, materials, insurance and/or bonding to satisfy the work requirements of the bid proposal

No Made efforts to expand the search for MWBE firms and Veteran-Owned businesses beyond the usual geographic boundaries.

No Other--any other evidence that the bidder submits which may show that the bidder has made reasonable good faith efforts to include MWDBE and Veteran participation.

NOTE: Failure to submit any of the documentation requested in this section may be cause for rejection of bid. Bidders may include any other documentation deemed relevant to this requirement which is subject to approval by the MBE Liaison. Documentation of Good Faith Efforts must be submitted with the Bid, if the participation Goal is not met.

The undersigned acknowledges that all information is accurate. Any misrepresentations may result in termination of the contract and/or be subject to applicable Federal and State laws concerning false statements and claims.

Hydromax USA

Company
12/12/22

Date



Company Representative
Vice President

Title

Hydromax USA did request and receive the DBE/ VOSB list from the MBE Liaison with purchasing for LFUCG. After reviewing available DBE/ VOSB companies, none have experience with the specialized tasks necessary to complete any of the available tasks.

8. AUTHENTICATION OF BID AND STATEMENT OF NON-COLLUSION AND CONFLICT OF INTEREST

I hereby swear (or affirm) under the penalty for false swearing:

1. That I am the Bidder (if the Bidder is an individual), a partner of the Bidder (if the Bidder is a partnership), or an officer or employee of the bidding corporation having authority to sign on its behalf (if the Bidder is a corporation);
2. That the attached bid has been arrived at by the Bidder independently, and has been submitted without collusion with, and without any agreement, understanding or planned common course of action, with any other contractor, vendor of materials, supplies, equipment or services described in the Invitation to Bid, designed to limit independent bidding or competition;
3. That the contents of the bid or bids have not been communicated by the Bidder or its employees or agents to any person not an employee or agent of the Bidder or its surety on any bond furnished, with the bid or bids, and will not be communicated to any such person, prior to the official opening of the bid or bids;
4. That the Bidder is legally entitled to enter into the contracts with the Lexington-Fayette Urban County Government, and is not in violation of any prohibited conflict of interest;
5. (Applicable to corporation only) That as a foreign corporation, we are registered with the Secretary of State, Commonwealth of Kentucky, and authorized to do business in the State N/A or, that as a domestic corporation, we are in good standing with the Secretary of State, Commonwealth of Kentucky X. Check the statement applicable.
6. This offer is for 60 calendar days from the date this bid is opened. In submitting the above, it is expressly agreed that, upon proper acceptance by the Lexington-Fayette Urban County Government of any or all items bid above, a contract shall thereby be created with respect to the items accepted.
7. That I have fully informed myself regarding the accuracy of the statements made in this statement.
8. That I certify that Subcontractors have not and will not be awarded to any firm(s) that have been debarred from noncompliance with the Federal Labor Standards, Title VI of the Civil Rights Act of 1964 As Amended, Executive Order 11246 As Amended or any other Federal Law.

9. STATEMENT OF EXPERIENCE

NAME OF INDIVIDUAL: Alex Sutton

POSITION/TITLE: Director of Water Technology/ Project Manager

STATEMENT OF EXPERIENCE: Over the last 12 years Alex Sutton has been involved at various program levels from field operations to project management on countless projects for LFUCG. Project experience includes the installation and maintenance of well over 500 flow monitors and direct responsibility on over 50 flow meter projects overall.

NAME OF INDIVIDUAL: Blaine Myers

POSITION/TITLE: Data Analyst Manager

STATEMENT OF EXPERIENCE: Blaine has direct oversight of multiple data analysts who are experienced with processing flow monitoring and rain gauge data. His team successfully completed the LFUCG's flow monitoring project in 2022.

NAME OF INDIVIDUAL: Ryan Easterday

POSITION/TITLE: Field Technician/ Field Supervisor

STATEMENT OF EXPERIENCE: Ryan's experience spans over 20 years with the installation and maintenance of thousands of flow meters across hundreds of projects. As a field supervisor Ryan has been directly involved with all HUSA flow monitoring project performed for LFUCG over the last 8 years.

NAME OF INDIVIDUAL: Jeff Graham

POSITION/TITLE: Founder/ Business Development

STATEMENT OF EXPERIENCE: Jeff has been responsible for all the work HUSA has performed for LFUCG. This includes the installation and maintenance of more than 500 flow monitors. In total, Mr. Graham has been responsible for 50+ flow monitoring projects.

NAME OF INDIVIDUAL: _____

POSITION/TITLE: _____

STATEMENT OF EXPERIENCE: _____

NAME OF INDIVIDUAL: _____

POSITION/TITLE: _____

STATEMENT OF EXPERIENCE: _____

* Include all officers, office management's, Affirmative Action officials, and field management personnel. (Attach separate sheets if necessary.)

10. EQUAL OPPORTUNITY AGREEMENT

The Law

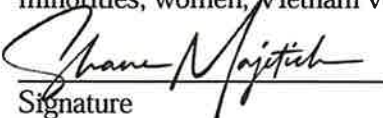
- * Title VII of the Civil Rights Act of 1964 (amended 1972) states that it is unlawful for an employer to discriminate in employment because of race, color, religion, sex, age (40-70 years) or national origin.
- * Executive Order No. 11246 on Nondiscrimination under Federal contract prohibits employment discrimination by contractor and subcontractor doing business with the Federal Government or recipients of Federal funds. This order was later amended by Executive Order No. 11375 to prohibit discrimination on the basis of sex.
- * Section 503 of the Rehabilitation Act of 1973 States:
The Contractor will not discriminate against any employee or applicant for employment because of physical or mental handicap.
- * Section 2012 of the Vietnam Era Veterans Readjustment Act of 1973 requires Affirmative Action on behalf of disabled veterans and veterans of the Vietnam Era by contractors having Federal Contracts.
- * Section 206 (A) of Executive Order 12086, Consolidation of Contract Compliance Functions for Equal Employment Opportunity, states:
The Secretary of Labor may investigate the employment practices of any Government contractor or sub-contractor to determine whether or not the contractual provisions specified in Section 202 of this order have been violated.

The Lexington-Fayette Urban County Government practices Equal Opportunity in recruiting, hiring and promoting. It is the Government's intent to affirmatively provide employment opportunities for those individuals who have previously not been allowed to enter into the mainstream of society. Because of its importance to the local Government, this policy carries the full endorsement of the Mayor, Commissioners, Directors, and all supervisory personnel. In following this commitment to Equal Employment Opportunity and because the Government is the benefactor of the Federal funds, it is both against the Urban County Government policy and illegal for the Government to let contracts to companies which knowingly or unknowingly practice discrimination in their employment practices. Violation of the above mentioned ordinances may cause a contract to be canceled and the contractor may be declared ineligible for future consideration.

Please sign this statement in the appropriate space acknowledging that you have read and understand the provisions contained herein. Return this document as part of your application packet.

Bidders

I/We agree to comply with the Civil Rights Laws listed above that govern employment rights of minorities, women, Vietnam veterans, handicapped, and aged persons.


Signature

Hydromax USA, LLC
Name of Business

The Entity (regardless of whether construction contractor, non-construction contractor or supplier) agrees to provide equal opportunity in employment for all qualified persons, to prohibit discrimination in employment because of race, color, creed, national origin, sex or age, and to promote equal

employment through a positive, continuing program from itself and each of its sub-contracting agents. This program of equal employment opportunity shall apply to every aspect of its employment policies and practices.

The Kentucky equal Employment Opportunity Act of 1978 (KRS 45.560-45.640) requires that any count, city, town, school district, water district, hospital district, or other political subdivision of the state shall include in directly or indirectly publicly funded contracts for supplies, materials, services, or equipment hereinafter entered into the following provisions:

During the performance of this contract, the contractor agrees as follows:

- (1) *The contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age or national origin;*
- (2) *The contractor will state in all solicitations or advertisements for employees placed by or on behalf of the contractors that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, age or national origin;*
- (3) *The contract will post notices in conspicuous places, available to employees and applicants for employment, setting forth the provisions of the non-discrimination clauses required by this section; and*
- (4) *The contractor will send a notice to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding advising the labor union or workers' representative of the contractor's commitments under the nondiscrimination clauses.*

The Act further provides:

KRS 45.610. Hiring minorities – Information required

- (1) *For the length of the contract, each contractor shall hire minorities from other sources within the drawing area, should the union with which he has collective bargaining agreements be unwilling to supply sufficient minorities to satisfy the agreed upon goals and timetable.*
- (2) *Each contractor shall, for the length of the contract, furnish such information as required by KRS 45.560 to KRS 45.640 and by such rules, regulations and orders issued pursuant thereto and will permit access to all books and records pertaining to his employment practices and work sites by the contracting agency and the department for purposes of investigation to ascertain compliance with KRS 45.560 to 45.640 and such rules, regulations and orders issued pursuant thereto.*

KRS 45.620. Action against contractor – Hiring of minority contractor or subcontractor

- (1) *If any contractor is found by the department to have engaged in an unlawful practice under this chapter during the course of performing under a contract or subcontract covered under KRS 45.560 to 45.640, the department shall so certify to the contracting agency and such certification shall be binding upon the contracting agency unless it is reversed in the course of judicial review.*

- (2) *If the contractor is found to have committed an unlawful practice under KRS 45.560 to 45.640, the contracting agency may cancel or terminate the contract, conditioned upon a program for future compliance approved by the contracting agency and the department. The contracting agency may declare such a contractor ineligible to bid on further contracts with that agency until such time as the contractor complies in full with the requirements of KRS 45.560 – 45.640.*
- (3) *The equal employment provisions of KRS 45.560 to 45.640 may be met in part by a contractor by subcontracting to a minority contractor or subcontractor. For the provisions of KRS 45.560 to 45.640, a minority contractor or subcontractor shall mean a business that is owned and controlled by one or more persons disadvantaged by racial or ethnic circumstances.*

KRS 45.630 Termination of existing employee not required, when

Any provision of KRS 45.560 to 45.640 notwithstanding, no contractor shall be required to terminate an existing employee upon proof that that employee was employed prior to the date of the contract.

KRS 45.640 Minimum skills

Nothing in KRS 45.560 to 45.640 shall require a contractor to hire anyone who fails to demonstrate the minimum skills required to perform a particular job.

It is recommended that all of the provisions quoted above to be included as special conditions in each contract. In the case of a contract exceeding \$250,000, the contractor is required to furnish evidence that his work-force in Kentucky is representative of the available work-force in the area from which he draws employees, or to supply an Affirmative Action plan which will achieve such representation during the life of the contract.

11. EQUAL EMPLOYMENT OPPORTUNITY AFFIRMATIVE ACTION POLICY

It is the policy of Hydromax USA, LLC

to assure that all applicants for employment and all employees are treated on a fair and equitable basis without regard to their race, religion, sex, color, handicap, natural origin or age.

Such action shall include employment, promotion, demotion, recruitment or recruitment advertising, layoff or termination, rates of pay and other forms of compensation, and selection for training, whether apprenticeship and/or on-the-job-training.

Furthermore, this company agrees to make special recruitment efforts to hire the protected class whenever feasible. This company also agrees to adhere to all applicable federal, state, and local laws relating to Equal Employment Opportunity for all individuals.

14. DEBARRED FIRMS

PROJECT NAME: 2023 Capacity Assurance Program Flow Monitoring Field Services

BID NUMBER: 122-2022

**LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT
LEXINGTON, KY**

All prime Contractors shall certify that Subcontractors have not and will not be awarded to any firms that has been debarred for noncompliance with the Federal Labor Standards, Title VI of the Civil Rights Act of 1964 As Amended, Executive Order 11246 As Amended or any other Federal Law.

All bidders shall complete the attached certification in duplicate and submit both copies to the Owner with the bid proposal. The Owner (grantee) shall transmit one copy to the Lexington-Fayette Urban County Government, Division of Community Development, within fourteen (14) days after bid opening.

The undersigned hereby certifies that the firm of Hydromax USA, LLC has not and will not award a subcontract, in connection with any contract award to it as the result of this bid, to any firm that has been debarred for noncompliance with the Federal labor Standards, Title VI of the civil Rights Act of 1964, Executive Order 11246 as amended or any Federal Law.

Hydromax USA, LLC
Name of Firm Submitting Bid


Signature of Authorized Official

Vice President
Title

12/12/22
Date

15. DEBARMENT CERTIFICATION

All contractors/subcontractors shall complete the following certification and submit it with the bid proposal.


The contractor/subcontractor certifies in accordance with Executive Order 12549 (Debarment and Suspension 2/18/86) that to the best of its knowledge and belief, that it and its principals:

- 1) Are not presently debarred, suspended, proposed for debarment, declared negligible, or voluntarily excluded from covered transactions or contract by any Federal department or agency for noncompliance with the Federal Labor Standards, Title VI of the Civil Rights Act of 1964 as amended, Executive Order 11246 as amended or any other Federal law;
 - a) Have not within a three year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - b) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(a) of this certification; and
 - c) Have not within a three year period preceding this bid has one or more public (Federal, State or local) transactions or contracts terminated for cause or default.
- 2) Where the contractor is unable to certify to any of the statements in this certification, such prospective contractors shall attach an explanation to this certification form.

Firm Name: Hydromax USA

Project: 122-2022

Printed Name and Title of Authorized Representative: Shane Majetich - Vice President

Signature: 

Date: 12/12/22

END OF SECTION

CO= GE53931
 U= GE53931

**EQUAL EMPLOYMENT OPPORTUNITY
 2021 EMPLOYER INFORMATION REPORT EEO-1
 SINGLE ESTABLISHMENT REPORT**

SECTION B - COMPANY IDENTIFICATION

1. HYDROMAX USA
 14301 FNB Parkway Suite 301
 Omaha, NE 68154

2.a. HYDROMAX USA
 14301 FNB Parkway Suite 301
 Omaha, NE 68154

SECTION C - TEST FOR FILING REQUIREMENT

1- Y 2- N 3- N DUNS=

SECTION D - EMPLOYMENT DATA

SECTION E - ESTABLISHMENT INFORMATION
 NAICS: 541990 - All Other Professional, Scientific,
 and Technical Services

c. EIN= 200602448

JOB CATEGORIES	HISPANIC OR LATINO		NOT-HISPANIC OR LATINO										OVERALL TOTALS					
	MALE	FEMALE	***** MALE *****					***** FEMALE *****										
			WHITE	BLACK OR AFRICAN AMERICAN	NATIVE HAWAIIAN OR PACIFIC ISLANDER	ASIAN	AMERICAN INDIAN OR ALASKAN NATIVE	TWO OR MORE RACES	WHITE	BLACK OR AFRICAN AMERICAN	NATIVE HAWAIIAN OR PACIFIC ISLANDER	ASIAN		AMERICAN INDIAN OR ALASKAN NATIVE	TWO OR MORE RACES			
EXECUTIVE/SR OFFICIALS & MGRS	0	0	9	0	0	0	0	0	0	0	1	2	0	0	0	0	0	12
FIRST/MID OFFICIALS & MGRS	0	1	36	1	0	0	0	0	0	0	1	5	0	0	1	0	0	45
PROFESSIONALS	2	2	10	2	0	0	2	0	0	1	1	6	1	0	0	0	1	27
TECHNICIANS	32	2	227	87	9	7	2	18	19	3	0	1	3	0	1	2	1	410
SALES WORKERS	0	0	5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	5
ADMINISTRATIVE SUPPORT	3	1	31	3	0	1	0	2	37	5	0	1	0	0	0	0	3	87
CRAFT WORKERS	0	0	10	1	0	0	0	0	0	0	0	0	0	0	0	0	0	11
OPERATIVES	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
LABORERS & HELPERS	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
SERVICE WORKERS	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
TOTAL	37	6	328	94	9	10	2	23	69	9	0	3	2	5	597			
PREVIOUS REPORT TOTAL																		

SECTION F - REMARKS

DATES OF PAYROLL PERIOD: 10/1/2021 THRU 10/7/2021
SECTION G - CERTIFICATION

CERTIFYING OFFICIAL: AshleyDiana Walker
 EMAIL: ashleydiana.walker@hydromaxusa.com
 REPORT CONTACT PERSON: AshleyDiana Walker
 EMAIL: ashleydiana.walker@hydromaxusa.com

CERTIFIED DATE [EST]: 6/28/2022 12:45 PM
 TITLE: Senior Payroll and Benefits
 PHONE: 402-594-4710
 TITLE: Senior Payroll and Benefits
 PHONE: 402-594-4710

13. EVIDENCE OF INSURABILITY

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT CONSTRUCTION PROJECT
(Use separate form for each Agency or Brokerage agreeing to provide coverage)

Names Insured: Hydromax USA LLC Employee ID: _____
 Address: 3700 River Walk Drive Suite 145 Flower Mound, TX 75028 Phone: 877-389-2227

Project to be insured: LFUCG 2023 Flow Monitoring

In lieu of obtaining certificates of insurance at this time, the undersigned agrees to provide the above Named Insured with the minimum coverage listed below. These are outlined in the Insurance and Risk Management of Part V (Special Conditions), including all requirements, and conditions:

Section Items	Coverage	Minimum Limits and Policy Requirements	Limits Provided To Insured	Name of Insurer	A.M. Best's Code	Rating
SC-4, Section 2, Part 4.1 - see provisions	CGL	\$1,000,000 per occ. And \$2,000,000 aggregate	\$ \$1,000,000 per occ. And \$2,000,000 aggregate	The Travelers Indemnity Company of Connecticut	002517	A++
SC-4, Section 2, Part 4.1 - see provisions	AUTO	\$2,000,000/per occ.	\$ \$1,000,000/per occ. primary and \$5M excess	The Travelers Indemnity Company of America & Gemini Insurance Company	004003 012118	A++ A+
SC-4, Section 2, Part 4.1 - see provisions	WC	Statutory w/ endorsement as noted	\$ Statutory w/ endorsement	The Charter Oak Fire Insurance Company	002516	A++

Section 2 includes required provisions, statements regarding insurance requirements, and the undersigned agrees to abide by all provisions for the coverage's checked above unless stated otherwise when submitting.

Lockton Companies, LLC
 Agency or Brokerage Mary Kay Cody
 Name of Authorized Representative
3 City Place Drive, Suite 900
 Senior Account Executive, SVP
 Street Address
 Title
St. Louis, MO 63141
 City
 State
 Zip
314-432-0500
 Telephone Number
 Date
12/08/2022
 Authorized Signature

NOTE: Authorized signatures may be the agent's if agent has placed insurance through an agency agreement with the insurer. If insurance is brokered, authorized signature must be that of authorized representative of insurer.

IMPORTANT: Contract may not be awarded if a completed and signed copy of this form for all coverage's listed above is not provided with the bid.

Request for Taxpayer Identification Number and Certification

**Give Form to the
 requester. Do not
 send to the IRS.**

▶ Go to www.irs.gov/FormW9 for instructions and the latest information.

Print or type.
 See Specific Instructions on page 3.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank. Hydromax USA LLC	
2 Business name/disregarded entity name, if different from above	
3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes. <input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate <input checked="" type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ▶ <u>C</u> <small>Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.</small> <input type="checkbox"/> Other (see instructions) ▶	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3): Exempt payee code (if any) _____ Exemption from FATCA reporting code (if any) _____ <small>(Applies to accounts maintained outside the U.S.)</small>
5 Address (number, street, and apt. or suite no.) See instructions. 3700 River Walk Drive Suite 145	Requester's name and address (optional)
6 City, state, and ZIP code Flower Mound, TX 75028	
7 List account number(s) here (optional)	

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number	
[] [] [] - [] [] - [] [] [] []	
or	
Employer identification number	
2 0 - 0 6 0 2 4 4 8	

Part II Certification

Under penalties of perjury, I certify that:

- The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
- I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
- I am a U.S. citizen or other U.S. person (defined below); and
- The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here	Signature of U.S. person ▶ <i>Debra R. Lemmich</i>	Date ▶ <i>October 18, 2022</i>
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General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.

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GENERAL CONDITIONS
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PART IV

GENERAL CONDITIONS

1. DEFINITIONS

Wherever used in these General Conditions or the other Contract Documents, the following terms have the meanings indicated which are applicable to both the singular and plural thereof.

1.1 Addenda

Written or graphic instruments issued prior to the opening of Bids which clarify, correct, or change the Bid Documents or the Contract Documents.

1.2 Agreement

The written agreement between OWNER and CONTRACTOR covering the Work to be performed; other Contract Documents are attached to the Agreement and made a part thereof as provided therein.

1.3 Application for Payment

The form accepted by ENGINEER which is to be used by CONTRACTOR in requesting progress or final payments and which is to include such supporting documentation as is required by the Contract Documents.

1.4 Bid

The offer or proposal of the Bidder submitted on the prescribed form setting forth the prices for the Work to be performed.

1.5 Bidder

An individual, partnership, or corporation, who submit a Bid for a prime contract with the OWNER, for the Work described in the proposed Contract Documents.

1.6 Bonds

Bid, performance and payment bonds and other instruments of security.

1.7 Calendar Day

A calendar day of twenty-four hours measured from midnight to the next midnight shall constitute a day.

1.8 Change Order

A document recommended by ENGINEER, which is signed by CONTRACTOR and OWNER and authorizes an addition, deletion or revision in the Work, or an adjustment in the Contract Price or the Contract Time, issued on or after the Effective Date of the Agreement.

1.9 Contract Documents

The Advertisement for Bidders, Information for Bidders, Agreement, Addenda (which pertain to the Contract Documents), CONTRACTOR'S Bid (including documentation accompanying the Bid and any post-bid documentation submitted prior to the Notice of Award) when attached as an exhibit to the Agreement, the Bonds, these General Conditions, the Special Conditions, the Specifications and the Drawings as the same are more specifically identified in the Agreement, together with all amendments, modifications and supplements.

1.10 Contract Unit Price

The monies payable by OWNER to CONTRACTOR under the Contract Documents as stated in the Agreement. Unit Prices are to be firm for the term of this Contract.

1.11 Contract Time

The number of consecutive calendar days between the date of issuance of the Notice to Proceed and the contract completion date.

1.12 CONTRACTOR

The person, firm or corporation with whom OWNER has entered into the Agreement.

1.13 Defective

An adjective which when modifying the word Work refers to Work that is unsatisfactory, faulty or deficient, or does not conform to the Contract Documents, or does not meet the requirements of any inspection, reference standard, test or approval referred to in the Contract Documents, or has been damaged prior to ENGINEER'S recommendation of final payment (unless responsibility for the protection thereof has been assumed by OWNER).

1.14 Drawings

The drawings which show the character and scope of the Work to be performed and which have been prepared or approved by ENGINEER and are referred to in the Contract Documents.

1.15 Effective Date of the Agreement

The date indicated in the Agreement on which it becomes effective.

1.16 ENGINEER

The Lexington-Fayette Urban County Government Division of Water Quality or its authorized representative.

1.17 Field Order

A documented order issued by ENGINEER which orders minor changes in the Work, but which does not involve a change in the Contract Price or the Contract Time.

1.18 Giving Notice

Whenever any provision of the Contract Documents requires the giving of written notice, it will be deemed to have been validly given if delivered in person to the

individual or to a member of the firm or to an officer of the corporation for whom it is intended, or if delivered at or sent by registered or certified mail, postage prepaid, to the last business address known to the giver of the notice.

1.19 Laws and Regulations

Laws, rules, regulations, ordinances, codes and/or orders.

1.20 Notice of Award

The written notice by OWNER to the apparent successful bidder stating that upon compliance by the apparent successful bidder with the conditions enumerated therein, within the time specified, OWNER will sign and deliver the Agreement.

1.21 Notice to Proceed

A written notice given by OWNER to CONTRACTOR fixing the date on which the Contract Time will commence to run and on which CONTRACTOR shall start to perform CONTRACTOR'S obligations under the Contract Documents.

1.22 OWNER

The Lexington-Fayette Urban County Government.

1.23 Partial Utilization

Placing a portion of the Work in service for the purpose for which it is intended (or related purpose) before reaching Completion for all the Work.

1.24 Project

The total construction of which the Work to be provided under the Contract Documents may be the whole, or a part as indicated elsewhere in the Contract Documents.

1.25 Inspector

The authorized representative of the ENGINEER who is assigned to the site or any part thereof.

1.26 Shop Drawings

All drawings, diagrams, illustrations, schedules and other data which are specifically prepared by or for CONTRACTOR to illustrate some portion of the Work and all illustrations, brochures, standard schedules, performance charts, instructions, diagrams and other information prepared by a Supplier and submitted by CONTRACTOR to illustrate material or equipment for some portion of the Work.

1.27 Specifications

Those portions of the Contract Documents consisting of written technical descriptions of materials, equipment, construction systems, standards and workmanship as applied to the Work and certain administrative details applicable thereto.

1.28 Standard Specifications

The "Standard Specifications for Road and Bridge Construction", Transportation Cabinet, Department of Highways, Commonwealth of Kentucky, current edition. MUTCD shall refer to the "Manual of Uniform Traffic Control Devices.

1.29 Subcontractor

An individual, firm or corporation having a direct contract with CONTRACTOR or with any other Subcontractor for the performance of a part of the Work at the site.

1.30 Special Conditions

The part of the Contract Documents which amends or supplements these General Conditions.

1.31 Supplier

A manufacturer, fabricator, supplier, distributor, materialman or vendor.

1.32 Underground Facilities

All pipelines, conduits, ducts, cables, wires, manholes, vaults, tanks, tunnels or other such facilities or attachments, and any encasements containing such facilities which have been installed underground to furnish any of the following services or materials: electricity, gases, steam, liquid petroleum products, telephone or other communications, cable television, sewage and drainage removal, traffic or other control systems or water.

1.33 Unit Price Work

This is covered in 10.9 of this chapter.

1.34 Work

The entire completed construction or the various separately identifiable parts thereof required to be furnished under the Contract Documents. Work is the result of performing services, furnishing labor and furnishing and incorporating materials and equipment into the construction, all as required by the Contract Documents.

1.35 Time Period

When any period of time is referred to in the Contract Documents by days, it will be computed to exclude the first and include the last day of such period. If the last day of any such period falls on a Saturday or Sunday or on a day made a legal holiday by the law of the applicable jurisdiction, such day will be omitted from the computation.

2. PRELIMINARY MATTERS

2.1 Delivery of Bonds

When the CONTRACTOR delivers the executed Agreements to OWNER, CONTRACTOR shall also deliver to OWNER, such Bonds, Insurance Certificate, and Power of Attorney as CONTRACTOR may be required to furnish.

2.2 Copies of Documents

Owner shall furnish to CONTRACTOR up to three copies (unless otherwise specified in the Special Conditions) of the Contract Documents as are reasonably necessary for the execution of the Work. Additional copies will be furnished, upon request, at the cost of reproduction.

2.3 Commencement of Contract Time; Notice to Proceed

The Contract Time will commence to run on the day specified in the Notice to Proceed.

2.4 Starting the Project

CONTRACTOR shall start to perform the Work on the date when the Contract Time commences to run, but no Work shall be done at the site prior to the date on which the Contract Time commences to run.

2.5 Before Starting Construction

Before undertaking each part of the Work, CONTRACTOR shall carefully study and compare the Contract Documents and check and verify pertinent figures shown thereon and all applicable field measurements. CONTRACTOR shall promptly report in writing to ENGINEER any conflict, error or discrepancy which CONTRACTOR may discover and shall obtain a written interpretation or clarification from ENGINEER before proceeding with any Work affected thereby; however, CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any conflict, error or discrepancy in the Contract Documents, unless CONTRACTOR had actual knowledge thereof or should reasonably have known thereof.

2.6 Submittal of Schedules

Within ten days after the effective date of the Agreement (unless otherwise specified) CONTRACTOR shall submit to ENGINEER for review:

2.6.1 an estimated progress schedule indicating the starting and completion dates of the various stages of the Work;

2.6.2 a preliminary schedule of Shop Drawing submissions; and

2.6.3 a preliminary schedule of values for all of the Work which will include quantities and prices of items aggregating the Contract Price and will subdivide the Work into component parts in sufficient detail to serve as the basis for progress payments during construction. Such prices will include an appropriate amount of overhead and profit applicable to each item of Work which will be confirmed in writing by CONTRACTOR at the time of submission.

2.7 Preconstruction Conference

Before CONTRACTOR starts the Work at the proposed site, a conference attended by CONTRACTOR, ENGINEER, EEO-Affirmative Action Officer, and other appropriate parties will be held to discuss the following issues: (1) The scheduling of

the Work to be completed; (2) The procedures for handling shop drawings and other submittals; (3) The processing of applications for payment; (4) The establishment of an understanding among the involved parties in regard to the proposed project; and (5) The establishment of procedures for effectively implementing the LFUCG's 10% minimum DBE goals.

2.8 Finalizing Schedules

At least ten days before submission of the first Application for Payment a conference attended by CONTRACTOR, ENGINEER and others as appropriate will be held to finalize the schedules submitted in accordance with paragraph 2.6. The finalized progress schedule will be acceptable to ENGINEER as providing orderly progression of the Work to completion within the Contract Time, but such acceptance will neither impose on ENGINEER responsibility for the progress or scheduling of the Work nor relieve CONTRACTOR from full responsibility thereof. The finalized schedule of Shop Drawing submissions will be acceptable to ENGINEER as providing a workable arrangement for processing the submissions. The finalized schedule of values will be acceptable to ENGINEER as to form and substance.

3. CONTRACT DOCUMENTS: INTENT, CONFLICTS, AMENDING AND REUSE

3.1 General

The Contract Documents comprise the entire agreement between OWNER and CONTRACTOR concerning the Work. The Contract Documents are complementary; what is called for by one is as binding as if called for by all. The Contract Documents will be construed in accordance with the law of the place of the Project.

3.2 Intent

It is the intent of the Contract Documents to describe a functionally complete Project (or part thereof) to be constructed in accordance with the Contract Documents. Any Work, materials or equipment that may reasonably be inferred from the Contract Documents as being required to produce the intended result will be supplied whether or not specifically called for. When words which have a well-known technical or trade meaning are used to describe Work, materials or equipment such words shall be interpreted in accordance with that meaning. Reference to standard specifications, manuals or codes of any technical society, organization or association, or to the laws or regulations of any governmental authority, whether such reference be specific or by implication, shall mean the latest standard specification, manual, code or laws or regulations in effect at the time of opening of Bids (or, on the Effective Date of the Agreement if there were no Bids), except as may be otherwise specifically stated. However, no provision of any referenced standard specification, manual or code (whether or not specifically incorporated by reference in the Contract Documents) shall be effective to change the duties and responsibilities of OWNER, CONTRACTOR or ENGINEER, or any of their consultants, agents or employees from those set forth in the Contract Documents, nor shall it be effective to assign to ENGINEER, or any of ENGINEER'S consultants, agents or employees, any

duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 8.12.3 or 8.12.4. Clarifications and interpretations of the Contract Documents shall be issued by ENGINEER as provided in paragraph 8.4.

3.3 Conflicts

If, during the performance of the Work, CONTRACTOR finds a conflict, error or discrepancy in the Contract Documents, CONTRACTOR shall so report to ENGINEER in writing at once and before proceeding with the Work affected thereby shall obtain a written interpretation or clarification from ENGINEER; however, CONTRACTOR shall not be liable to OWNER or ENGINEER for failure to report any conflict, error or discrepancy in the Contract Documents unless CONTRACTOR had actual knowledge thereof or should reasonably have known thereof.

In resolving such conflicts, errors and discrepancies, the documents shall be given precedence in the following order:

1. Agreement
2. Field and Change Orders
3. Addenda
4. Special Conditions
5. Instruction to Bidders
6. General Conditions
7. Specifications and Drawings

Figure dimension on drawings shall govern over scale dimensions and detailed Drawings shall govern over general Drawings.

3.4 Amending and Supplementing Contract Documents

The Contract Documents may be amended to provide for additions, deletions and revisions in the Work or to modify the terms and conditions thereof by means of a Change Order or a Field Order. Contract Price and Contract Time may only be changed by a Change Order.

3.5 Reuse of Documents

Neither CONTRACTOR nor any Subcontractor or Supplier or other person or organization performing or furnishing any of the Work under a direct or indirect contract with OWNER shall have or acquire any title to or ownership rights in any of the Drawings, Specifications or other documents (or copies of any thereof) prepared by or bearing the seal of ENGINEER; and they shall not reuse any of them on extensions of the Project or any other project without written consent of OWNER and ENGINEER and specific written verification or adaptation by ENGINEER.

4. AVAILABILITY OF LANDS; PHYSICAL CONDITIONS, REFERENCE POINTS

4.1 Availability of Lands

OWNER shall furnish, as indicated in the Contract Documents, the lands upon which the Work is to be performed, rights-of-way and easements for access thereto, and such other lands which are designated for the use of CONTRACTOR. Easements for permanent structures or permanent changes in existing facilities will be obtained and paid for by OWNER, unless otherwise provided in the Contract Documents. If CONTRACTOR believes that any delay in OWNER'S furnishing these lands, rights-of-way or easements entitles CONTRACTOR to an extension of the Contract Time, CONTRACTOR may make a claim therefor as provided in Article 11. ENGINEER shall determine if the claim is legitimate or not. CONTRACTOR shall provide for all additional lands and access thereto that may be required for temporary construction facilities or storage of materials and equipment.

4.2 Physical Conditions

4.2.1 Explorations and Reports

Reference is made to the Special Conditions for identification of those reports of explorations and tests of subsurface conditions at the site that have been utilized by ENGINEER in preparation of the Contract Documents. CONTRACTOR may rely upon the accuracy of the technical data contained in such reports, but not upon non-technical data, interpretations or opinions contained therein or for the completeness thereof for CONTRACTOR'S purposes. Except as indicated in the immediately preceding sentence and in paragraph 4.2.6, CONTRACTOR shall have full responsibility with respect to subsurface conditions at the site.

4.2.2 Existing Structures

Reference is made to the Special Conditions for identification of those drawings of physical conditions in or relating to existing surface and subsurface structures (except Underground Facilities referred to in paragraph 4.3 which are at or contiguous to the site that have been utilized by ENGINEER in preparation of the Contract Documents. CONTRACTOR may rely upon the accuracy of the technical data contained in such drawings, but not for the completeness thereof for CONTRACTOR'S purposes. Except as indicated in the immediately preceding sentence and in paragraph 4.2.6, CONTRACTOR shall have full responsibility with respect to physical conditions in or relating to such structures.

4.2.3 Report of Differing Conditions

If CONTRACTOR believes that:

4.2.3.1 any technical data on which CONTRACTOR is entitled to rely as provided in paragraphs 4.2.1 and 4.2.2 is inaccurate, or

4.2.3.2 any physical conditions uncovered or revealed at the site differ materially from that indicated, reflected or referred to in the Contract Documents,

CONTRACTOR shall, promptly after becoming aware thereof and before performing and WORK in connection therewith (except in an emergency) notify OWNER and ENGINEER in writing about the inaccuracy or difference.

4.2.4 ENGINEER'S Review

Engineer will promptly review the pertinent conditions, determine the necessity of obtaining additional explorations or tests with respect thereto and advise CONTRACTOR of ENGINEER'S findings and conclusions.

4.2.5 Possible Document Change

If ENGINEER concludes that there is a material error in the Contract Documents or that because of newly discovered conditions a change I the Contract Documents is required, a Change Order will be issued as provided in Article 10 to reflect and document the consequences of the inaccuracy or difference.

4.2.6 Possible Price and Time Adjustments

In each such case, an increase or decrease in the Contract Price or an extension or shortening of the Contract Time, or any combination thereof, will be allowable to the extent that they are attributable to any such inaccuracy or difference.

4.3 Physical Conditions-Underground Facilities

4.3.1 Shown or Indicated

The information and data shown or indicated in the Contract Documents with respect to existing Underground Facilities at or contiguous to the site is based on information and data furnished to OWNER or ENGINEER by the owners of such underground facilities or by others. Unless it is otherwise expressly provided in the Special Conditions:

4.3.1.1 OWNER and ENGINEER shall not be responsible for the accuracy or completeness of any such information or data; and,

4.2.1.2 CONTRACTOR shall have full responsibility for reviewing and checking all such information and data; for locating all underground facilities shown or indicated in the Contract Documents; for coordination of the Work with the owners of such underground facilities during construction; and for the safety and protection thereof and repairing any damage thereto resulting from the Work, the cost of all of which will be considered as having been included in the Contract Price.

4.3.2 Not Shown or Indicated

If an underground facility is uncovered or revealed at or contiguous to the site which was not shown or indicated in the Contract Documents and which CONTRACTOR could not reasonably have been expected to be aware of,

CONTRACTOR shall, promptly after becoming aware thereof and before performing any Work affected thereby (except in an emergency), identify the owner of such Underground Facility and give written notice thereof to that owner and to OWNER and ENGINEER. ENGINEER will promptly review the underground facility to determine the extent to which the Contract Documents should be modified to reflect and document the consequences of the existence of the Underground Facility, and the Contract Documents will be amended or supplemented to the extent necessary. During such time, CONTRACTOR shall be responsible for the safety and protection of such underground facility. CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, to the extent that they are attributable to the existence of any underground facility that was not shown or indicated in the Contract Documents and which CONTRACTOR could not reasonably have been expected to be aware of.

4.4 Reference Points

OWNER shall provide engineering surveys to establish reference points for construction which in ENGINEER'S judgment are necessary to enable CONTRACTOR to proceed with the Work. CONTRACTOR shall be responsible for laying out the Work (unless otherwise specified), shall protect and preserve the established reference points and shall make no changes or relocations without the prior written approval of OWNER. CONTRACTOR shall report to ENGINEER whenever any reference point is lost or destroyed or requires relocation because of necessary changes in grades or locations, and shall be responsible for the accurate replacement or relocation of such reference points by a Registered Land Surveyor.

5. CONTRACTOR'S RESPONSIBILITIES

5.1 Supervision

CONTRACTOR shall supervise and direct the Work competently and efficiently, devoting such attention thereto and applying such skills and expertise as may be necessary to perform the Work in accordance with the Contract Documents. CONTRACTOR shall assure that all CONTRACTOR personnel (including subcontractors, etc.) conduct themselves in a courteous and respectful manner toward the ENGINEER and the general public. Failure to comply with this condition of the Contract will result in immediate suspension of the Work. Following a review by the Commissioner of Public Works, the Contract may be terminated (see GC section 14). CONTRACTOR shall be solely responsible for the means, methods, techniques, sequences and procedures of construction, but CONTRACTOR shall not be responsible for the negligence of others in the design or selection of a specific means, method, technique, sequence or procedure of construction which is indicated in and required by the Contract Documents. CONTRACTOR shall be responsible to see that the finished Work complies accurately with the Contract Documents.

5.2 Superintendence

CONTRACTOR shall keep on the Work at all times during its progress a competent resident superintendent, who shall not be replaced without written notice to OWNER and ENGINEER except under extraordinary circumstances. The superintendent will be CONTRACTOR'S representative at the site and shall have authority to act on behalf of CONTRACTOR. All communications given to the superintendent shall be as binding as if given to CONTRACTOR.

5.3 Labor

CONTRACTOR shall provide competent, suitably qualified personnel to survey and lay out the Work and perform construction as required by the Contract Documents. CONTRACTOR shall at all times maintain good discipline and order at the site. Except in connection with the safety or protection of persons or the Work or property at the site or adjacent thereto, and except as otherwise indicated in the Contract Documents, all Work at the site shall be performed during regular working hours, and CONTRACTOR will not permit overtime work or the performance of Work on Saturday, Sunday or any legal holiday without OWNER'S written consent given after prior written notice to ENGINEER.

5.4 Start-Up and Completion of Work

Unless otherwise specified, CONTRACTOR shall furnish and assume full responsibility for all materials, equipment, labor, transportation, construction equipment and machinery, tools, appliances, fuel, power, light, heat, telephone, water, sanitary facilities, temporary facilities and all other facilities and incidentals necessary for the furnishing, performance, testing, start-up and completion of the Work.

5.5 Materials and Equipment

All materials and equipment shall be of good quality and new, except as otherwise provided in the Contract Documents. If required by ENGINEER, CONTRACTOR shall furnish satisfactory evidence (including reports of required tests) as to the kind and quality of materials and equipment. All materials and equipment shall be applied, installed, connected, erected, used, cleaned and conditioned in accordance with the instructions of the applicable supplier except as otherwise provided in the Contract Documents; but no provision of any such instructions will be effective to assign to ENGINEER, or any of ENGINEER'S consultants, agents or employees, any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 8.12.3 or 8.12.4.

5.5.1 Not Clearly Specified or Indicated

In all instances where materials specified are obtainable in different sizes, weights, trade grades, qualities or finishes, etc., whose weights, trade grades, qualities or finishes, etc., are not clearly specified or indicated on the Drawings, the CONTRACTOR shall notify the ENGINEER of all such instances at least five (5) days in advance of receiving the proposals. The Engineer will then determine which size, weight, trade grade, quality, finish, etc., is required.

5.5.2 Coordination of Work

The CONTRACTOR shall see that for his own Work and for the work of each subcontractor, proper templates and patterns necessary for the coordination of the various parts of the Work are prepared. The CONTRACTOR shall furnish or require the Subcontractor to furnish such duplicates as will enable the Subcontractors to fit together and execute fully their respective portions of the Work.

5.6 **Adjusting Progress Schedule**

CONTRACTOR shall submit to ENGINEER for acceptance (to the extent indicated in paragraph 2.8) adjustments in the progress schedule to reflect the impact thereon of new developments; these will conform generally to the progress schedule then in effect and additionally will comply with any provisions of the Contract Documents applicable thereto.

5.7 **Substitutes or “Or-Equal” Items**

5.7.1 General

Whenever materials or equipment are specified or described in the Contract Documents by using the name of a proprietary item or the name of a particular supplier, the naming of the item is intended to establish the type, function, and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of other Suppliers may be accepted by OWNER/ENGINEER if sufficient information is submitted by CONTRACTOR to allow OWNER/ENGINEER to determine that the material or equipment proposed is equivalent or equal to that named. The procedure for review by OWNER/ENGINEER will include the following. Requests for review of substitute items of material and equipment will not be accepted by OWNER/ENGINEER from anyone, other than CONTRACTOR. If CONTRACTOR wishes to furnish or use a substitute item of material or equipment, CONTRACTOR shall make written application to OWNER/ENGINEER for acceptance thereof, certifying that the proposed substitute will perform adequately the functions and achieve the results called for by the general design, be similar and of equal substance to that specified and be suited to the same use as that specified. The application will state that the evaluation and acceptance of the proposed substitute will not prejudice CONTRACTOR'S achievement of completion on time, whether or not acceptance of the substitute for use in the Work will require a change in any of the Contract Documents (or in the provisions of any other direct contract with OWNER for work on the Project) to adapt the design to the proposed substitute and whether or not incorporation or use of the substitute in connection with the Work is subject to payment of any license fee or royalty. All variations of the proposed substitute from that specified will be identified in the application and available maintenance, repair and replacement service will be indicated. The application will also contain an itemized estimate of all

costs that will result directly or indirectly from acceptance of such substitute, including costs of redesign and claims of other contractors affected by the resulting change, all of which shall be considered by OWNER/ENGINEER in evaluating the proposed substitute. OWNER/ENGINEER may require CONTRACTOR to furnish at CONTRACTOR'S expense additional data about the proposed substitute.

5.7.2 Substitutes

If a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents, CONTRACTOR may furnish or utilize a substitute means, method, sequence, technique or procedure of construction acceptable to OWNER/ENGINEER, if CONTRACTOR submits sufficient information to allow OWNER/ENGINEER to determine that the substitute proposed is equivalent to that indicated or required by the Contract Documents. The procedure for review by OWNER/ENGINEER will be similar to that provided in paragraph 5.7.1 as applied by OWNER/ENGINEER.

5.7.3 OWNER/ENGINEER'S Approval

OWNER/ENGINEER will be allowed a reasonable time within which to evaluate each proposed substitute. OWNER/ENGINEER will be the sole judge of acceptability, and no substitute will be ordered, installed or utilized without OWNER/ENGINEER'S prior written acceptance which will be evidenced by either a Change Order or an approved Shop Drawing. OWNER may require CONTRACTOR to furnish at CONTRACTOR'S expense a special performance guarantee or other surety with respect to any substitute. OWNER/ENGINEER will record time required by OWNER/ENGINEER and OWNER/ENGINEER'S consultants in evaluating substitutions proposed by CONTRACTOR and in making changes in the Contract Documents occasioned thereby. Whether or not OWNER/ENGINEER accepts a proposed substitute, CONTRACTOR shall reimburse OWNER for the charges of OWNER/ENGINEER and OWNER/ENGINEER'S consultants for evaluating each proposed substitute.

5.8 Subcontractors, Suppliers, and Others

5.8.1 Acceptable to ENGINEER

CONTRACTOR shall not employ any Subcontractor, Supplier or other person or organization (including those acceptable to OWNER and ENGINEER as indicated in paragraph 5.8.2), whether initially or as a substitute, against whom OWNER or ENGINEER may have reasonable objection. CONTRACTOR shall not be required to employ any Subcontractor, Supplier or other person or organization to furnish or perform any of the Work against whom CONTRACTOR has reasonable objection.

5.8.2 Objection After Due Investigation

If the Contract Documents require the identity of certain Subcontractors, Suppliers or other persons or organizations (including those who are to furnish the principal items of materials and equipment) to be submitted to OWNER in advance of the specified date prior to the Effective Date of the Agreement for acceptance by OWNER and ENGINEER and if CONTRACTOR has submitted a list thereof, OWNER'S or ENGINEER'S acceptance (either in writing or by failing to make written objection thereto by the date indicated for acceptance or objection in the bidding documents or the Contract Documents) of any such Subcontractor, Supplier or other person or organization so identified may be revoked on the basis of reasonable objection after due investigation, in which case CONTRACTOR shall submit an acceptable substitute. No acceptance by OWNER or ENGINEER of any such Subcontractor, Supplier or other person or organization shall constitute a waiver of any right of OWNER or ENGINEER to reject defective Work.

5.8.3 Contractor Responsible for Acts of Subcontractors

The CONTRACTOR shall perform on the site, and with its own organization, work equivalent to at least fifty (50) percent of the total amount of Work to be performed under the Contract. This percentage may be reduced by a supplemental agreement to this Contract if, during performing the Work, the CONTRACTOR requests a reduction and the Urban County Engineer determines that the reduction would be to the advantage of the Urban County Government.

The CONTRACTOR shall, at the time he submits his proposal for the Contract, notify the OWNER in writing of the names of Subcontractors proposed for the Work. He shall not employ any Subcontractor without the prior written approval of the OWNER.

CONTRACTOR shall be fully responsible to OWNER and ENGINEER for all acts and omissions of the Subcontractors, Suppliers and other persons and organizations performing or furnishing any of the Work under a direct or indirect contract with CONTRACTOR just as CONTRACTOR is responsible for CONTRACTOR'S own acts and omissions. Nothing in the Contract Documents shall create any contractual relationship between OWNER or ENGINEER and any such Subcontractor, Supplier or other person or organization, nor shall it create any obligation on the part of OWNER or ENGINEER to pay or to see to the payment of any moneys due any such Subcontractor, Supplier or other person or organization except as may otherwise be required by Laws and Regulations.

5.8.4 Division of Specifications

The divisions and sections of the Specifications and the identifications of any Drawings shall not control CONTRACTOR in dividing the Work among Subcontractors or Suppliers or delineating the Work to be performed by any specific trade.

5.8.5 Agreement Between Contractor and Subcontractors

All Work performed for CONTRACTOR by a Subcontractor will be pursuant to an appropriate agreement between CONTRACTOR and the Subcontractor which specifically binds the Subcontractor to the applicable terms and conditions of the Contract Documents for the benefit of OWNER and ENGINEER.

5.8.6 Statements and Comments by CONTRACTOR

Neither the CONTRACTOR, his employees, nor his subcontractors shall at any time make any statement or comment as to the project scope, nature, intention, design, or construction method to any third party or parties without the explicit written consent of the OWNER.

Any third party requesting such information shall be referred to the OWNER or his representative.

Should there be any change from the original intent of the project as a result of any statement or comment by the contractor, his employees or subcontractors, contractor shall be held liable for any change in the scope, nature, design, or construction method and shall bear the full cost for the previously mentioned changes.

5.9 Patent Fees and Royalties

CONTRACTOR shall pay all license fees and royalties and assume all costs incident to the use in the performance of the Work or the incorporation in the Work of any invention, design, process, product or device which is the subject of patent rights or copyrights held by others.

5.10 Permits

Unless otherwise provided in the Special conditions, CONTRACTOR shall obtain and pay for all construction permits and licenses. OWNER shall assist CONTRACTOR, when necessary, in obtaining such permits and licenses. CONTRACTOR shall pay all governmental charges and inspection fees necessary for the prosecution of the Work, which are applicable at the time of opening of Bids, or if there are no Bids on the Effective Date of the Agreement. CONTRACTOR shall pay all charges of utility owners for connections to the Work, and OWNER shall pay all charges of such utility owners for capital costs related thereto such as plant investment fees.

5.11 Laws and Regulations

5.11.1 CONTRACTOR to Comply

CONTRACTOR shall give all notices and comply with all Laws and Regulations applicable to furnishing and performance of the Work. Except where otherwise expressly required by applicable Laws and Regulations, neither OWNER nor ENGINEER shall be responsible for monitoring CONTRACTOR'S compliance with any Laws and Regulations.

5.11.2 Specifications and Drawings at Variance

If CONTRACTOR observes that the Specifications or Drawings are at variance with any Laws or Regulations, CONTRACTOR shall give ENGINEER prompt written notice thereof, and any necessary changes will be authorized by one of the methods indicated in paragraph 3.4. If CONTRACTOR performs any Work knowing or having reason to know that it is contrary to such Laws, or Regulations, and without such notice to ENGINEER, CONTRACTOR shall bear all costs arising therefrom; however, it shall not be CONTRACTOR'S primary responsibility to make certain that the Specifications and Drawings are in accordance with such Laws and Regulations.

5.12 Taxes

CONTRACTOR shall pay all sales, consumer, use and other similar taxes required to be paid by CONTRACTOR in accordance with the Laws and Regulations of the place of the Project which are applicable during the performance of the Work. Any party, firm or individual submitting a proposal pursuant to invitation must have paid all taxes owed to the Lexington-Fayette Urban County Government at the time the proposal is submitted, and must maintain a "current" status in regard to those taxes throughout the Contract. If applicable, business must be licensed in Fayette County.

5.13 Use of Premises

5.13.1 Project Site

CONTRACTOR shall confine construction equipment, the storage of materials and equipment and the operations of workers to the staging areas or work site areas identified in and permitted by the Contract Documents and other land and areas permitted by Laws and Regulations, rights-of-way, permits and easements, and shall not unreasonably encumber the premises with construction equipment or other materials or equipment. CONTRACTOR shall assume full responsibility for any damage to any such land or area, or to the owner or occupant thereof or of any land or areas contiguous thereto, resulting from the performance of the Work. Should any claim be made against OWNER or ENGINEER by any such owner or occupant because of the performance of the Work, CONTRACTOR shall promptly attempt to settle with such other party by agreement or otherwise

resolve the claim by arbitration or at law. CONTRACTOR shall, to the fullest extent permitted by Laws and Regulations, indemnify and hold OWNER and ENGINEER harmless from and against all claims, damages, losses and expenses (including, but not limited to, fees of engineers, architects, attorneys and other professionals and court and arbitration costs) arising directly, indirectly or consequentially out of any action, legal or equitable, brought by any such other party against OWNER or ENGINEER to the extent based on a claim arising out of CONTRACTOR'S performance of the Work.

5.13.2 Clean UP

During the progress of the Work, CONTRACTOR shall keep the premises free from accumulations of waste materials, rubbish and other debris resulting from the Work. At the completion of the Work, CONTRACTOR shall remove all waste materials, rubbish and debris from and about the premises as well as all tools, appliances, construction equipment and machinery, and surplus materials, and shall leave the site clean and ready for occupancy by OWNER. CONTRACTOR shall restore to original condition all property not designated for alteration by the Contract Documents.

5.13.1 Loading of Structures

CONTRACTOR shall not load nor permit any part of any structure to be loaded in any manner that will endanger the structure, nor shall CONTRACTOR subject any part of the Work or adjacent property to stresses or pressures that will endanger it.

5.14 **Record Drawings**

CONTRACTOR shall maintain in a safe place at the site one record copy of all Drawings, Specifications, Addenda, Change Orders, Field Orders and written interpretations and clarifications (issued pursuant to paragraph 9.4) in good order and annotated to show all changes made during construction. These record documents together with all approved samples and a counterpart of all approved Shop Drawings will be available to ENGINEER for reference. Upon completion of the Work, these record documents, samples and Shop Drawings will be delivered to ENGINEER for OWNER.

5.15 **Shop Drawings and Samples**

5.15.1 Shop Drawing Submittals

After checking and verifying all field measurements and after complying with applicable procedures specified, CONTRACTOR shall submit to ENGINEER for review and approval in accordance with the accepted schedule of Shop Drawing submissions (see paragraph 2.8), or for other appropriate action if so indicated in the Special Conditions, five copies (unless otherwise specified) of all Shop Drawings, which will bear a stamp or specific written indication that CONTRACTOR has satisfied CONTRACTOR'S responsibilities under the Contract Documents with respect to the review of

the submission. All submissions will be identified as ENGINEER may require. The data shown on the Shop Drawings will be complete with respect to quantities, dimensions, specified performance and design criteria, materials and similar data to enable ENGINEER to review the information as required.

5.15.2 Sample Submittals

CONTRACTOR shall also submit to ENGINEER for review and approval with such promptness as to cause no delay in Work, all samples required by the Contract Documents. All samples will have been checked by and accompanied by a specific written indication that CONTRACTOR has satisfied CONTRACTOR'S responsibilities under the Contract Documents with respect to the review of the submission and will be identified clearly as to material, Supplier, pertinent data such as catalog numbers and the use for which intended.

5.15.3 Review by CONTRACTOR

Before submission of each Shop Drawing or sample CONTRACTOR shall have determined and verified all quantities, dimensions, specified performance criteria, installation requirements, materials, catalog numbers and similar data with respect thereto and reviewed or coordinated each Shop Drawing or sample with other Shop Drawings and samples and with the requirements of the Work and the Contract Documents.

5.15.4 Notice of Variation

At the time of each submission, CONTRACTOR shall give ENGINEER specific written notice of each variation that the Shop Drawings or samples may have from the requirements of the Contract Documents, and, in addition, shall cause a specific notation to be made on each Shop Drawing submitted to ENGINEER for review and approval of each such variation.

5.15.5 ENGINEER'S Approval

ENGINEER will review and approve with reasonable promptness Shop Drawings and samples, but ENGINEER'S review and approval will be only for conformance with the design concept of the Project and for compliance with the information given in the Contract Documents and shall not extend to means, methods, techniques, sequences or procedures of construction (except where a specific means, method, technique, sequence or procedure of construction is indicated in or required by the Contract Documents) or to safety precautions or programs incident thereto. The review and approval of a separate item as such will not indicate approval of the assembly in which the item functions. CONTRACTOR shall make corrections required by ENGINEER, and shall return the required number of corrected copies of Shop Drawings and submit, as required, new samples for review and approval. CONTRACTOR shall direct specific attention in writing to revisions other than the corrections called for by ENGINEER on previous submittals.

5.15.6 Responsibility for Errors and Omissions

ENGINEER'S review and approval of Shop Drawings or samples shall not relieve CONTRACTOR from responsibility for any variation from the requirements of the Contract Documents unless CONTRACTOR has in writing called ENGINEER'S attention to each such variation at the time of submission as required by paragraph 5.15.4 and ENGINEER has given written approval of each such variation by a specific written notation thereof incorporated in or accompanying the Shop Drawing or sample approval; nor will any approval by ENGINEER relieve CONTRACTOR from responsibility for errors or omissions in the Shop Drawings or from responsibility for having complied with the provisions of paragraph 5.15.3.

5.15.7 Cost of Related Work

Where a Shop or sample is required by the Specifications, any related Work performed prior to ENGINEER'S review and approval of the pertinent submission will be the sole expense and responsibility of CONTRACTOR.

5.16 Continuing the Work

CONTRACTOR shall carry on the Work and adhere to the progress schedule during all disputes or disagreements with OWNER. No Work shall be delayed or postponed pending resolutions of any disputes or disagreements, except as permitted by paragraph 14.5 or as CONTRACTOR and OWNER may otherwise agree in writing.

5.17 Erosion and Sediment Control

5.17.1 General Environmental Requirements

The CONTRACTOR and Subcontractors performing work on projects on behalf of the OWNER shall comply with all applicable federal, state, and local environmental regulations and all requirements and conditions set forth in "special" permits including but not limited to Corp of Engineers 404 permits, 401 Water Quality Certifications, Stream Crossing and Floodplain Encroachment Permits.

Any fines or penalties resulting from the failure to comply with the terms of the federal, state or local permits or perform necessary corrective action are solely the obligation of the CONTRACTOR.

5.17.2 Storm Water Pollution Prevention

A. The CONTRACTOR shall exercise due care to prevent or minimize any damage to any stream or wetland from pollution by debris, sediment or other material. The operation of equipment and/or materials in a jurisdictional wetland is expressly prohibited. Water that has been used for washing or processing, or that contains oils, sediments or other pollutants shall not be discharged from the job site. Such waters shall be collected and properly disposed of by the CONTRACTOR in accordance with applicable local, state and federal law.

B. The CONTRACTOR is solely responsible for securing all required State and local permits associated with storm water discharges from the project including, but not necessarily limited to the KY Notice of Intent to Disturb (NOI) for Coverage of Storm Water Discharges Associated with Construction Activities under the KPDES Storm Water General Permit KYR100000 and the LFUCG, Land Disturbance Permit. Permit application preparation and all required documentation are the responsibility of the CONTRACTOR. The CONTRACTOR is solely responsible for maintaining compliance with the storm water pollution prevention plan or erosion and sediment control plan and ensuring the following:

- a. That the Storm water Pollution Prevention Plan (SWPPP) or erosion control plan is current and available for review on site;
- b. That any and all storm water inspection reports required by the permit are conducted by qualified personnel and are available for review onsite; and
- c. That all best management practices (BMPs) are adequately maintained and effective at controlling erosion and preventing sediment from leaving the site.

C. The CONTRACTOR shall provide the necessary equipment and personnel to perform any and all emergency measures that may be required to contain any spillage or leakage and to remove materials, soils or liquids that become contaminated. The collected spill material shall be properly disposed at the CONTRACTOR's expense.

D. Upon completion of the work and with the concurrence of the OWNER, the CONTRACTOR must file a Notice of Termination (NOT) of Coverage Under the KPDES General Permit for Storm Water Discharges Associated with Construction Activity with the appropriate local and state authorities.

E. Any fines or penalties resulting from the failure to comply with the terms of the state or local storm water permits or perform necessary corrective action are solely the obligation of the CONTRACTOR.

6. OTHER WORK

6.1 Related Work at Site

OWNER may perform other work related to the Project at the site by OWNER'S own forces, have other work performed by utility owners or let other direct contracts therefor which shall contain General Conditions similar to these. If the fact that such other work is to be performed was not noted in the Contract Documents, written notice thereof will be given to CONTRACTOR prior to starting any such other work; and, if such performance will involve additional expense to CONTRACTOR or requires additional time, a Change Order to the Contract will be negotiated.

6.2 Other Contractors or Utility Owners

CONTRACTOR shall afford each utility owner and other contractor who is a party to such a direct contract (or OWNER, if OWNER is performing the additional work with OWNER'S employees) proper and safe access to the site and a reasonable opportunity for the introduction and storage of materials and equipment and the execution of such work, and shall properly connect and coordinate the Work with theirs. CONTRACTOR shall do all cutting, fitting and patching of the Work that may be required to make its several parts come together properly and integrate with such other work. CONTRACTOR shall not endanger any work of others by cutting, excavating or otherwise altering their work and will only cut or alter their work with the written consent of ENGINEER and the others whose work will be affected. The duties and responsibilities of CONTRACTOR under this paragraph are for the benefit of such utility owners and other contractors to the extent that there are comparable provisions for the benefit of CONTRACTOR in said direct contracts between OWNER and such utility owners and other contractors.

6.3 Delays Caused by Others

If any part of CONTRACTOR'S Work depends for proper execution or results upon the work of any such other contractor or utility owner (or OWNER), CONTRACTOR shall inspect and promptly report to ENGINEER in writing any delays, defects or deficiencies in such work that render it unavailable or unsuitable for such proper execution and results. CONTRACTOR'S failure so to report will constitute an acceptance of the other work as fit and proper for integration with CONTRACTOR'S Work except for latent or non-apparent defects and deficiencies in the other work.

6.4 Coordination

If OWNER contracts with others for the performance of other work on the Project at the site, the person or organization who will have authority and responsibility for coordination of the activities among the various prime contractors will be identified in the Special Conditions, and the specific matters to be covered by such authority and responsibility will be itemized, and the extent of such authority and responsibilities will be provided, in the Special Conditions.

7. OWNER'S RESPONSIBILITIES

7.1 Communications

OWNER shall issue all communications to CONTRACTOR through ENGINEER.

7.2 Data and Payments

OWNER shall furnish the data required of OWNER under the Contract Documents promptly after they are due.

7.3 Lands, Easements, and Surveys

OWNER'S duties in respect of providing lands and easements and providing engineering surveys to establish reference points are set forth in paragraphs 4.1 and

4.4. Paragraph 4.2 refers to OWNER'S identifying and making available to CONTRACTOR copies of reports of explorations and tests of subsurface conditions at the site and in existing structures which have been utilized by ENGINEER in preparing the Drawings and Specifications.

7.4 Change Orders

OWNER is obligated to execute Change Orders as indicated in paragraph 9.4.

7.5 Inspections, Tests and Approvals

OWNER'S responsibility in respect to certain inspections, tests and approvals is set forth in paragraph 13.3.

7.6 Stop or Suspend Work

In connection with OWNER'S right to stop Work or suspend Work, see paragraph 12.4 and 14.1 Paragraph 14.2 deals with OWNER'S rights to terminate services of CONTRACTOR under certain circumstances.

8. ENGINEER'S STATUS DURING CONSTRUCTION

8.1 OWNER'S Representative

ENGINEER will be OWNER'S representative during the construction period. The duties and responsibilities and the limitations of authority of ENGINEER as OWNER'S representative during construction are set forth in the Contract Documents and shall not be extended without written consent of OWNER and ENGINEER.

8.2 Visits to Site

ENGINEER will make visits to the site at intervals appropriate to the various stages of construction to observe the progress and quality of the executed Work and to determine, in general, if the Work is proceeding in accordance with the Contract Documents. ENGINEER will not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of the Work. ENGINEER'S efforts will be directed toward providing for OWNER a greater degree of confidence that the completed Work will conform to the Contract Documents. On the basis of such visits and on-site observations, ENGINEER will keep OWNER informed of the progress of the Work and will endeavor to guard OWNER against defects and deficiencies in the Work.

8.3 Project Representation

ENGINEER will provide an Inspector to assist ENGINEER in observing the performance of the Work. If OWNER designates another agent to represent OWNER at the site who is not ENGINEER'S agent or employee, the duties, responsibilities and limitations of authority of such other person will be as provided in the Special Conditions.

8.4 Clarifications and Interpretations

ENGINEER will issue with reasonable promptness such written clarifications or interpretations of the requirements of the Contract Documents (in the form of Drawings or otherwise) as ENGINEER may determine necessary, which shall be consistent with or reasonably inferable from the overall intent of the Contract Documents.

8.5 Authorized Variations in Work

ENGINEER may authorize minor variations in the Work from the requirements of the Contract Documents which do not involve an adjustment in the Contract Price or the Contract Time and are consistent with the overall intent of the Contract Documents. These may be accomplished by a Field Order.

8.6 Rejecting Defective Work

ENGINEER will have authority to disapprove or reject Work which ENGINEER believes to be defective, and will also have authority to require special inspection or testing of the Work as provided in paragraph 12.3, whether or not the Work is fabricated, installed or completed.

8.7 Shop Drawings

In connection with ENGINEER'S responsibility for Shop Drawings and samples, see paragraphs 5.15.1 through 5.16 inclusive.

8.8 Change Orders

In connection with ENGINEER'S responsibilities as to Change Orders, see Articles 10, 11 and 12.

8.9 Payments

In connection with ENGINEER'S responsibilities with respect to Applications for Payment, etc., see Article 13.

8.10 Determinations for Unit Prices

ENGINEER will determine the actual quantities and classifications of Unit Price Work performed by CONTRACTOR.

ENGINEER will review with CONTRACTOR ENGINEER'S preliminary determinations on such matters before rendering a written decision thereon (by recommendation of an Application for Payment or otherwise).

8.11 Decision on Disputes

ENGINEER will be the initial interpreter of the requirements of the Contract Documents and judge of the acceptability of the Work thereunder. Claims, disputes and other matters relating to the acceptability of the Work or the interpretation of the requirements of the Contract Documents pertaining to the performance and furnishing of the Work and claims under Articles 10 and 11 in respect of changes in the Contract Price or Contract Time will be referred initially to ENGINEER in writing with a request for a formal decision in accordance with this paragraph, which ENGINEER will render in writing within a reasonable time. Written notice

of each such claim, dispute and other matter will be delivered to ENGINEER promptly (but in no event later than thirty days) after the occurrence of the event giving rise thereto, and written supporting data will be submitted to ENGINEER within sixty days after such occurrence unless ENGINEER allows an additional period of time to ascertain more accurate data in support of the claim.

8.12 Limitations on Engineer's Responsibilities

8.12.1 CONTRACTOR, Supplier, or Surety

Neither ENGINEER'S authority to act under this Article 8 or elsewhere in the Contract Documents nor any decision made by ENGINEER in good faith either to exercise or not exercise such authority shall give rise to any duty or responsibility of ENGINEER to CONTRACTOR, any Subcontractor, any Supplier, or any other person or organization performing any of the Work, or to any surety for any of them.

8.12.2 To Evaluate the Work

Whenever in the Contract Documents the terms "as ordered", "as directed", "as required", "as allowed", "as approved" or terms of like effect or import are used, or the adjectives "reasonable", "suitable", "acceptable", "proper", or "satisfactory" or adjectives or like "effect" or "import" are used to describe a requirement, direction, review or judgment of ENGINEER as to the Work, it is intended that such requirement, direction, review or judgment will be solely to evaluate the Work for compliance with the Contract Documents (unless there is a specific statement indicating otherwise). The use of any such term or adjective shall not be effective to assign ENGINEER any duty or authority to supervise or direct the furnishing or performance of the Work or any duty or authority to undertake responsibility contrary to the provisions of paragraph 8.12.3 or 8.12.4.

8.12.3 CONTRACTOR'S Means, Methods, Etc.

ENGINEER will not be responsible for CONTRACTOR'S means, methods, techniques, sequences or procedures of construction, or the safety precautions and programs incident thereto, and ENGINEER will not be responsible for CONTRACTOR'S failure to perform or furnish the Work in accordance with the Contract Documents.

8.12.4 Acts of Omissions of CONTRACTOR

ENGINEER will not be responsible for the acts or omissions of CONTRACTOR or of any Subcontractor, any Supplier, or of any other person or organization performing or furnishing any of the Work.

9. CHANGES IN THE WORK

9.1 OWNER May Order Change

Without invalidating the Agreement and without notice to any surety, OWNER may, at any time or from time to time, order additions, deletions or revisions in the Work; these will be authorized by a Change Order. Upon receipt of such notice, CONTRACTOR shall promptly proceed with the Work involved which will be performed under the applicable conditions of the Contract Documents (except as otherwise specifically provided).

9.2 Claims

Claims for an increase or decrease in the Contract Price or an extension or shortening or the Contract Time that should be allowed as a result of a Change Order will be settled as provided for in Article 10 or Article 11.

9.3 Work Not in Contract Documents

CONTRACTOR shall not be entitled to an increase in the Contract Price or an extension of the Contract Time with respect to any Work performed that is not required by the Contract Documents as amended, modified and supplemented as provided in paragraph 3.4, except in the case of an emergency and except in the case of uncovering Work as provided in paragraph 12.3.4.

9.4 Change Orders

OWNER and CONTRACTOR shall execute appropriate Change Orders covering:

9.4.1 changes in the Work which are ordered by OWNER pursuant to paragraph 9.1, are required because of acceptance of defective Work under paragraph 12.7 or corrective defective Work under paragraph 12.8, or are agreed to by the parties;

9.4.2 changes in the Contract Price or Contract Time which are agreed to by the parties; and

9.4.3 changes in the Contract Price or Contract Time which embody the substance of any written decision rendered by ENGINEER pursuant to paragraph 8.11; provided that, in lieu of executing any such Change Order, an appeal may be taken from any such decision in accordance with the provisions of the Contract Documents and applicable Laws and REGULATIONS, but during any such appeal, CONTRACTOR shall carry on the Work and adhere to the progress schedule as provided in paragraph 5.16.

9.5 Notice of Change

If notice of any change affecting the general scope of the Work or the provisions of the Contract Documents (including, but not limited to, Contract Price or Contract Time) is required by the provisions of any Bond to be given to a surety, the giving of any such notice will be CONTRACTOR'S responsibility, and the amount of each applicable Bond will be adjusted accordingly.

10. CHANGE OF CONTRACT PRICE

10.1 Total Compensation

The Contract Price constitutes the total compensation (subject to authorized adjustments) payable to CONTRACTOR for performing the Work. All duties, responsibilities and obligations assigned to or undertaken by CONTRACTOR shall be at his expense without change in the Contract Price.

10.2 Claim for Increase or Decrease in Price

The Contract Price may only be changed by a Change Order. Any claim for an increase or decrease in the Contract Price shall be based on written notice delivered by the CONTRACTOR to the ENGINEER promptly (but in no event later than thirty days) after the occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the amount of the claim with supporting data shall be delivered within sixty days after such occurrence (unless ENGINEER allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by CONTRACTOR'S written statement that the amount claimed covers all known amounts (direct, indirect, and consequential) to which the CONTRACTOR is entitled as a result of the occurrence of said event.

10.3 Value of Work

The value of any Work covered by a Change Order or of any claim for an increase or decrease in the Contract Price shall be determined in one of the following ways:

10.3.1 Unit Prices

Where the Work involved is covered by unit prices contained in the Contract Documents, by application of unit prices to the quantities of the items involved (subject to the provisions of paragraphs 10.9.1. through 10.9.3, inclusive).

10.3.2 Lump Sum

By mutual acceptance of a lump sum (which may include an allowance for overhead and profit not necessarily in accordance with paragraph 10.6.2.1).

10.3.3 Cost Plus Fee

On the basis of the Cost of the Work (determined as provided in paragraphs 10.4 and 10.5) plus a CONTRACTOR'S fee for overhead and profit (determined as provided in paragraphs 10.6 and 10.7).

10.4 Cost of the Work

The term Cost of the Work means the sum of all costs necessarily incurred and paid by CONTRACTOR in the proper performance of the Work. Except as otherwise may be agreed to in writing by OWNER, such costs shall be in amounts no higher than those prevailing in the locality of the Project; shall include only the following items; and shall not include any of the costs itemized in paragraph 10.5:

10.4.1 Payroll Costs

Payroll costs for employees in the direct employ of CONTRACTOR in the performance of the Work under schedules of job classifications agreed upon by OWNER and CONTRACTOR. Payroll costs for employees not employed full time on the Work shall be apportioned on the basis of their time spent on the Work. Payroll costs shall include, but not be limited to, salaries and wages plus the cost of fringe benefits which shall include social security contributions, unemployment, excise and payroll taxes, workers' or workmen's compensation, health and retirement benefits, bonuses, sick leave, vacation and holiday pay applicable thereto. Such employees shall include superintendents and foremen at the site. The expenses of performing Work after regular working hours, on Saturday, Sunday or legal holidays, shall be included in the above to the extent authorized by OWNER.

10.4.2 Materials and Equipment Costs

Cost of all materials and equipment furnished and incorporated in the Work, including costs of transportation and storage thereof, and Suppliers' field services required in connection therewith. All cash discounts shall accrue to CONTRACTOR unless OWNER deposits funds with CONTRACTOR with which to make payments, in which case the cash discounts shall accrue to OWNER. All trade discounts, rebates and refunds and all returns from sale of surplus materials and equipment shall accrue to OWNER, and CONTRACTOR shall make provisions so that they may be obtained.

10.4.3 Subcontractor Costs

Payments made by CONTRACTOR to the Subcontractors for Work performed by Subcontractors. If required by OWNER, CONTRACTOR shall obtain competitive bids from Subcontractors acceptable to CONTRACTOR and shall deliver such bids to OWNER who will then determine, with the advice of ENGINEER, which bids will be accepted. If a subcontract provides that the Subcontractor is to be paid on the basis of Cost of the Work Plus a Fee, the Subcontractor's Cost of the Work shall be determined in the same manner as CONTRACTOR'S Cost of the Work. All subcontracts shall be

subject to the other provisions of the Contract Documents insofar as applicable.

10.4.4 Special Consultant Costs

Costs of special consultants (including but not limited to engineers, architects, testing laboratories, surveyors, attorneys and accountants) employed for services specifically related to the Work.

10.4.5 Supplemental Costs

10.4.5.1 The proportion of necessary transportation, travel and subsistence expenses of CONTRACTOR'S employees incurred in discharge of duties connected with the Work.

10.4.5.2 Cost, including transportation and maintenance, of all materials, supplies, equipment, machinery, appliances, office and temporary facilities at the site and hand tools not owned by the workers, which are consumed in the performance of the Work, and cost less market value of such items used but not consumed which remain the property of CONTRACTOR.

10.4.5.3 Rentals of all construction equipment and machinery and the parts thereof whether rented from CONTRACTOR or others in accordance with rental agreements approved by OWNER with the advice of ENGINEER, and the costs of transportation, loading, unloading, installation, dismantling and removal shall be in accordance with terms of said rental agreements. The rental of any such equipment, machinery or parts shall cease when the use thereof is no longer necessary for the Work.

10.4.5.4 Sales, consumer, use or similar taxes related to the Work, and for which CONTRACTOR is liable, imposed by Laws and Regulations.

10.4.5.5 Deposits lost for causes other than negligence of CONTRACTOR, any Subcontractor or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, and royalty payments and fees for permits and licenses.

10.4.5.6 Losses and damages (and related expenses), not compensated by insurance or otherwise, to the Work or otherwise sustained by CONTRACTOR in connection with

the performance and furnishing of the Work (except losses and damages within the deductible amounts of property insurance established by OWNER), provided they have resulted from causes other than the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable. Such losses shall include settlements made with the written consent and approval of OWNER. No such losses, damages and expenses shall be included in the Cost of the Work for the purpose of determining CONTRACTOR'S fee. If, however, any such loss or damage requires reconstruction and CONTRACTOR is placed in charge thereof, CONTRACTOR shall be paid a fee proportionate to that stated in paragraph 10.6.2 for services.

10.4.5.7 The cost of utilities, fuel and sanitary facilities at the site.

10.4.5.8 Minor expenses such as telegrams, long distance telephone calls, telephone service at the site, expressage and similar petty cash items in connection with the Work.

10.4.5.9 Cost of premiums for additional Bonds and insurance required because of changes in the Work and premiums for property insurance coverage within the limits of the deductible amounts established by OWNER.

10.5 Not to Be Included in Cost of the Work

The term Cost of the Work shall not include any of the following:

10.5.1 Costs of Officers and Executives

Payroll costs and other compensation of CONTRACTOR'S officers, executives, principals (of partnership and sole proprietorships), general managers, engineers, architects, estimators, attorneys, auditors, accountants, purchasing and contracting agents, expeditors, timekeepers, clerks and other personnel employed by CONTRACTOR whether at the site or in CONTRACTOR'S principal or a branch office for general administration of the Work and not specifically included in the agreed upon schedule of job classifications referred to in paragraph 10.4.1 or specifically covered by paragraph 10.4.4 - all of which are to be considered administrative costs covered by the CONTRACTOR'S fee.

10.5.2 Principal Office

Expenses of CONTRACTOR'S principal and branch offices other than CONTRACTOR'S office at the site.

10.5.3 Capital Expense

Any part of CONTRACTOR'S capital expenses, including interest on CONTRACTOR'S capital employed for the Work and charges against CONTRACTOR for delinquent payments.

10.5.4 Bonds and Insurance

Cost of premiums for all Bonds and for all insurance whether or not CONTRACTOR is required by the Contract Documents to purchase and maintain the same (except for the cost of premiums covered by subparagraph 10.4.5.9 above).

10.5.5 Costs Due to Negligence

Costs due to the negligence of CONTRACTOR, any Subcontractor, or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable, including but not limited to, the correction of defective Work, disposal of materials or equipment wrongly supplied and making good any damage to property.

10.5.6 Other Costs

Other overhead or general expense costs of any kind and the costs of any item not specifically and expressly included in paragraph 10.4.

10.6 Contractor's Fee

The CONTRACTOR'S Fee allowed to CONTRACTOR for overhead and profit shall be determined as follows:

10.6.1 a mutually acceptable fixed fee; or if none can be agreed upon,

10.6.2 a fee based on the following percentages of the various portions of the Cost of the Work:

10.6.2.1 for costs incurred under paragraphs 10.4.1 and 10.4.2, the CONTRACTOR'S fee shall be fifteen percent;

10.6.2.2 for costs incurred under paragraph 10.4.3, the CONTRACTOR'S fee shall be five percent; and if a subcontract is on the basis of Cost of the Work Plus a fee, the maximum allowable to CONTRACTOR on account of overhead and profit of all Subcontractors shall be fifteen percent;

10.6.2.3 no fee shall be payable on the basis of costs itemized under paragraphs 10.4.4, 10.4.5 and 10.5;

10.6.2.4 the amount of credit to be allowed by CONTRACTOR to OWNER for any such change which results in a net decrease in cost will be the amount of the actual net decrease plus a deduction in CONTRACTOR'S Fee by an amount equal to ten percent of the net decrease; and

10.6.2.5 when both additions and credits are involved in any one change, the adjustment in CONTRACTOR'S fee shall be computed on the basis of the net change in accordance with paragraphs 10.6.2.1 through 10.6.2.4, inclusive.

10.7 Itemized Cost Breakdown

Whenever the cost of any Work is to be determined pursuant to paragraph 10.4 or 10.5, CONTRACTOR will submit in form acceptable to ENGINEER an itemized cost breakdown together with supporting data.

10.8 Cash Allowances

It is understood that CONTRACTOR has included in the Contract Price all allowances so named in the Contract Documents and shall cause the Work so covered to be done by such Subcontractors or Suppliers and for such sums within the limit of the allowances as may be acceptable to ENGINEER, CONTRACTOR agrees that:

10.8.1 Materials and Equipment

The allowances include the cost to CONTRACTOR (less any applicable trade discounts) of materials and equipment required by the allowances to be delivered at the site, and all applicable taxes; and

10.8.2 Other Costs

CONTRACTOR'S costs for unloading and handling on the site, labor, installation costs, overhead, profit and other expenses contemplated for the allowances have been included in the Contract Price and not in the allowances. No demand for additional payment on account of any thereof will be valid.

10.8.3 Change Order

Prior to final payment, an appropriate Change Order will be issued as recommended by ENGINEER to reflect actual amounts due CONTRACTOR on account of Work covered by allowances, and the Contract Price shall be correspondingly adjusted.

10.9 **Unit Price Work**

10.9.1 General

Where the Contract Documents provide that all or part of the Work is to be Unit Price Work, initially the Contract Price will be deemed to include for all Unit Price Work an amount equal to the sum of the established unit prices for each separately identified item of Unit Price Work times the estimated quantity of each item as indicated in the Agreement. The estimated quantities of items of Unit Price Work are not guaranteed and are solely for the purpose of comparison of Bids and determining an initial Contract Price. Determinations of the actual quantities and classifications of Unit Price Work performed by CONTRACTOR will be made by ENGINEER in accordance with Paragraph 8.10.

10.9.2 Overhead and Profit

Each unit price will be deemed to include an amount considered by CONTRACTOR to be adequate to cover CONTRACTOR'S overhead and profit for each separately identified item.

10.9.3 Claim for Increase in Unit Price

Where the quantity of any item of Unit Price Work performed by CONTRACTOR differs materially and significantly from the estimated quantity of such item indicated in the Agreement and there is no corresponding adjustment with respect to any other item of Work and if CONTRACTOR believes that CONTRACTOR has incurred additional expense as a result thereof, CONTRACTOR may make a claim for an increase in the Contract Price in accordance with Article 10.

11. **CHANGE OF CONTRACT TIME**

11.1 **Change Order**

The Contract Time may only be changed by a Change Order. Any claim for an extension or shortening of the Contract Time shall be based on written notice delivered to ENGINEER promptly (but in no event later than thirty days) after the

occurrence of the event giving rise to the claim and stating the general nature of the claim. Notice of the extent of the claim with supporting data shall be delivered within sixty days after such occurrence (unless ENGINEER allows an additional period of time to ascertain more accurate data in support of the claim) and shall be accompanied by the claimant's written statement that the adjustment claimed is the entire adjustment to which the claimant has reason to believe it is entitled as a result of the occurrence of said event. All claims for adjustment in the Contract Time shall be determined by ENGINEER in accordance with paragraph 8.11. No claim for an adjustment in the Contract Time will be valid if not submitted in accordance with the requirements of this paragraph 11.1.

11.2 Justification for Time Extensions

The Contract Time will be extended in an amount equal to time lost due to delays beyond the control of CONTRACTOR if a claim is made therefore as provided in paragraph 11.1. Such delays shall include, but not be limited to, acts or neglect by OWNER or others performing additional work as contemplated by Article 6, or to fires, floods, labor disputes, epidemics, abnormal weather conditions or acts of God.

11.3 Time Limits

All time limits stated in the Contract Documents are of the essence of the Agreement. The provisions of this Article 11 shall not exclude recovery for damages (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court costs) for delay by either party.

12. WARRANTY AND GUARANTEE; TESTS AND INSPECTIONS; CORRECTION, REMOVAL OR ACCEPTANCE OF DEFECTIVE WORK

12.1 Warranty and Guarantee

CONTRACTOR warrants and guarantees to OWNER and ENGINEER that all Work will be in accordance with the Contract Documents and will not be defective. All defective Work, whether or not in place, may be rejected, corrected or accepted as provided in this Article 12.

12.2 Access to Work

ENGINEER and ENGINEER'S representatives, other representatives of OWNER, testing agencies and governmental agencies with jurisdictional interests will have access to the Work at reasonable times for their observation, inspecting and testing. CONTRACTOR shall provide proper and safe conditions for such access.

12.3 Tests and Inspections

12.3.1 Timely Notice

CONTRACTOR shall give ENGINEER timely notice of readiness of the Work for all required inspections, tests or approvals.

12.3.2 Requirements and Responsibilities

The ENGINEER may require such inspection and testing during the course of the Work as he/she deems necessary to ascertain and assure the integrity and acceptable quality of the materials incorporated and the work performed. Inspection presence may be either full-time or intermittent, and neither the presence nor absence at any time of the ENGINEER or the INSPECTOR shall relieve the CONTRACTOR of sole responsibility for the acceptability and integrity of the Work or any part thereof.

The costs of sampling, testing, and inspection on-site to ascertain acceptability of the Work and materials will be borne by the OWNER except as otherwise provided. The OWNER will select a testing laboratory to perform such sampling and testing. Sampling and/or testing required by the CONTRACTOR or necessitated by failure of Work or materials to meet the above acceptability test shall be at the expense of the CONTRACTOR.

Inspection services may be performed by the employees of the OWNER or by others selected or designated by the OWNER or the ENGINEER.

Sampling and/or testing required for manufacturing quality and/or process control, for certification that raw mineral materials or manufactured products are the quality specified in the contract, or to assure the acceptability for incorporation into the Work shall be borne by the CONTRACTOR or the material supplier.

Cost for inspection, sampling, testing, and approvals required by the laws or regulations of any public body having competent jurisdiction shall be borne by the CONTRACTOR or the material supplier.

Sampling and testing will be in accord with pertinent codes and regulations and with appropriate standards of the American Society of Testing Materials or other specified standards.

12.3.3 On-Site Construction Test and Other Testing

All inspections, tests or approvals other than those required by Laws or Regulations of any public body having jurisdiction shall be performed by organizations acceptable to OWNER and CONTRACTOR (or by ENGINEER if so specified).

12.3.4 Covered Work

If any Work (including the work of others) that is to be inspected, tested or approved is covered without written concurrence of ENGINEER, it must, if requested by ENGINEER, be uncovered for observation. Such uncovering shall be at CONTRACTOR'S expense unless CONTRACTOR has given ENGINEER timely notice of CONTRACTOR'S intention to cover the same

and ENGINEER has not acted with reasonable promptness in response to such notice.

12.3.5 CONTRACTOR'S Obligation

Neither observations by ENGINEER nor inspections, tests or approvals by others shall relieve CONTRACTOR from CONTRACTOR'S obligations to perform the Work in accordance with the Contract Documents.

12.4 OWNER May Stop the Work

If the Work is defective, or CONTRACTOR fails to supply sufficient skilled workers or suitable materials or equipment, or fails to furnish or perform the Work in such a way that the completed Work will conform to the Contract Documents, OWNER may order CONTRACTOR to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, this right of OWNER to stop the Work shall not give rise to any duty on the part of OWNER to exercise this right for the benefit of CONTRACTOR or any other party.

12.5 Correction or Removal of Defective Work

If required by ENGINEER, CONTRACTOR shall promptly, as directed, either correct all defective Work, whether or not fabricated, installed or completed, or, if the Work has been rejected by ENGINEER, remove it from the site and replace it with non-defective Work. CONTRACTOR shall bear all direct, indirect and consequential costs of such correction or removal (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) made necessary thereby.

12.6 One Year Correction Period

If within one year after the date of Completion or such longer period of time as may be prescribed by Laws or Regulations or by the terms of any applicable special guarantee required by the Contract Documents or by any specific provision of the Contract Documents, any Work is found to be defective, CONTRACTOR shall promptly, without cost to OWNER and in accordance with OWNER'S written instructions, either correct such defective Work, or, if it has been rejected by OWNER, remove it from the site and replace it with non-defective Work. If CONTRACTOR does not promptly comply with the terms of such instructions, or in an emergency where delay would cause serious risk of loss or damage, OWNER may have the defective Work corrected or the rejected Work removed and replaced, and all direct, indirect and consequential costs of such removal and replacement (including but not limited to fees and charges of engineers, architects, attorneys and other professionals) will be paid by CONTRACTOR. In special circumstances where a particular item of equipment is placed in continuous service before Completion of all the Work, the correction period for that item may start to run from an earlier date if so provided in the Specifications or by Change Order.

12.7 Acceptance of Defective Work

If, instead of requiring correction or removal and replacement of defective Work, OWNER prefers to accept it, OWNER may do so. CONTRACTOR shall bear all direct, indirect and consequential costs attributable to OWNER'S evaluation of and determination to accept such defective Work (such costs to be approved by ENGINEER as to reasonableness and to include but not be limited to fees and charges of engineers, architects, attorneys and other professionals).

12.8 OWNER May Correct Defective Work

If CONTRACTOR fails within a reasonable time after written notice of ENGINEER to proceed to correct and to correct defective Work or to remove and replace rejected Work as required by ENGINEER in accordance with paragraph 12.5, or if CONTRACTOR fails to perform the Work in accordance with the Contract Documents, or if CONTRACTOR fails to comply with any other provision of the Contract Documents, OWNER may, after seven days' written notice to CONTRACTOR, correct and remedy any such deficiency. In exercising the rights and remedies under this paragraph OWNER shall proceed expeditiously. To the extent necessary to complete corrective and remedial action, OWNER may exclude CONTRACTOR from all or part of the site, take possession of all or part of the Work, and suspend CONTRACTOR'S services related thereto, take possession of CONTRACTOR'S tools, appliances, construction equipment and machinery at the site and incorporate in the Work all materials and equipment stored at the site or for which OWNER has paid CONTRACTOR but which are stored elsewhere. CONTRACTOR shall allow OWNER, OWNER'S representatives, agents and employees such access to the site as may be necessary to enable OWNER to exercise the rights and remedies under this paragraph. All direct, indirect and consequential costs of OWNER in exercising such rights and remedies will be charged against CONTRACTOR in an amount approved as to reasonableness by ENGINEER, and a Change Order will be issued incorporating the necessary revisions in the Contract Documents with respect to the Work; and OWNER shall be entitled to an appropriate decrease in the Contract Price. Such direct, indirect and consequential costs will include but not be limited to fees and charges of engineers, architects, attorneys and other professionals, all court costs and all costs of repair and replacement of work of others destroyed or damaged by correction, removal or replacement of CONTRACTOR'S defective Work. CONTRACTOR shall not be allowed an extension of the Contract Time because of any delay in performance of the Work attributable to the exercise by OWNER of OWNER'S rights and remedies hereunder.

13. PAYMENTS TO CONTRACTOR AND COMPLETION

13.1 Schedule of Values

The schedule of values established as provided in paragraph 2.8 will serve as the basis for progress payments and will be incorporated into a form of Application for Payment acceptable to ENGINEER. Progress payments on account of Unit Price Work will be based on the number of units completed.

13.2 Application for Progress Payment

At least ten days before each progress payment is scheduled (but not more often than once a month), CONTRACTOR shall submit to ENGINEER for review an Application for Payment filled out and signed by CONTRACTOR covering the Work completed as of the date of the Application and accompanied by such supporting documentation as is required by the Contract Documents. If payment is requested on the basis of materials and equipment not incorporated in the Work but delivered and suitably stored at the site or at another location agreed to in writing, the Application for Payment shall also be accompanied by a bill of sale, invoice or other documentation warranting that OWNER has received the materials and equipment free and clear of all liens, charges, security interests and encumbrances (which are hereinafter in these General Conditions referred to as "Liens") and evidence that the materials and equipment are covered by appropriate property insurance and other arrangements to protect OWNER'S interest therein, all of which will be satisfactory to OWNER. OWNER shall, within thirty (30) calendar days of presentation to him of an approved Application for Payment, pay CONTRACTOR the amount approved by ENGINEER. Monthly progress payments shall be ninety (90) percent of the sum obtained by applying the respective bid unit prices to the approved estimated quantities of work completed by the Contractor during the preceding month. The remaining ten (10) percent will be held by the Owner, as retainage. At such time as the Engineer deems appropriate - based on the quality of work performed, progress of cleanup, and other pertinent factors - the rate of retainage, or the total amount retained, may be reduced; although, any reduction in retainage, below the ten (10) percent level, is made solely at the Engineer's discretion. All remaining retainage held will be included in the final payment to the Contractor.

13.3 CONTRACTOR'S Warranty of Title

CONTRACTOR warrants and guarantees that title to all Work, materials and equipment covered by any Application for Payment, whether incorporated in the Project or not, will pass to OWNER no later than the time of payment free and clear of all Liens.

13.4 Review of Applications for Progress Payment

13.4.1 Submission of Application for Payment

ENGINEER will, after receipt of each Application for Payment, either indicate in writing a recommendation of payment and present the Application to OWNER, or return the Application to CONTRACTOR indicating in writing ENGINEER'S reasons for refusing to recommend payment. In the latter case, CONTRACTOR may make the necessary corrections and resubmit the Application.

13.4.2 ENGINEER'S Recommendation

ENGINEER may refuse to recommend the whole or any part of any payment, if, in ENGINEER'S opinion, it would be incorrect to make such representations to OWNER. ENGINEER may also refuse to recommend any such payment, or, because of subsequently discovered evidence or the results of subsequent inspections or tests, nullify any such payment previously recommended, to such extent as may be necessary in ENGINEER'S opinion to protect OWNER from loss because:

13.4.2.1 the Work is defective, or completed Work has been damaged requiring correction or replacement;

13.4.2.2 the Contract Price has been reduced by Written Amendment or Change Order;

13.4.2.3 OWNER has been required to correct defective Work or complete Work in accordance with paragraph 12.8; or

13.4.2.4 of ENGINEER'S actual knowledge of the occurrence of any of the events enumerated in paragraphs 14.2.1 through 14.2.9 inclusive.

13.5 Partial Utilization

OWNER at any time may request CONTRACTOR in writing to permit OWNER to use any such part of the Work which OWNER believes to be ready for its intended use and has been completed. If CONTRACTOR agrees, CONTRACTOR will certify to OWNER that said part of the Work is complete and request that a Certificate of Completion be issued for that part of the Work.

13.6 Final Inspection

Upon written notice from CONTRACTOR that the entire Work or an agreed portion thereof is complete, ENGINEER will make a final inspection with CONTRACTOR and will notify CONTRACTOR in writing of all particulars in which this inspection reveals that the Work is incomplete or defective. CONTRACTOR shall immediately take such measures as are necessary to remedy such deficiencies.

13.7 Final Application for Payment

After CONTRACTOR has completed all such corrections to the satisfaction of ENGINEER and delivered all maintenance and operating instructions, schedules, guarantees, Bonds, certificates of inspection, marked-up record documents (as provided in paragraph 5.14) and other documents - all as required by the Contract Documents, and after ENGINEER has indicated that the Work is acceptable (subject to the provisions of paragraph 13.10), CONTRACTOR may make application for final payment following the procedure for progress payments. The final Application for Payment shall be accompanied by all documentation called for in the Contract Documents, together with complete and legally effective releases or waivers (satisfactory to OWNER) of all Liens arising out of or filed in connection with the Work. In lieu thereof and as approved by OWNER, CONTRACTOR may furnish receipts or releases in full; an affidavit of CONTRACTOR that the releases and receipts include all labor, services, material and equipment for which a Lien could be filed, and that all payrolls, material and equipment bills, and other indebtedness connected with the Work for which OWNER or OWNER'S property might in any way be responsible, have been paid or otherwise satisfied; and consent of the surety, if any, to final payment. If any Subcontractor or Supplier fails to furnish a release or receipt in full, CONTRACTOR may furnish a Bond or other collateral satisfactory to OWNER to indemnify OWNER against any Lien.

13.8 Final Payment and Acceptance

13.8.1 ENGINEER'S Approval

If, on the basis of ENGINEER'S observation of the Work during construction and final inspection, and ENGINEER'S review of the final Application for Payment and accompanying documentation - all as required by the Contract Documents, ENGINEER is satisfied that the Work has been completed and CONTRACTOR'S other obligations under the Contract Documents have been fulfilled, ENGINEER will, after receipt of the final Application for Payment, indicate in writing ENGINEER'S recommendation of payment and present the Application to OWNER for payment. Thereupon ENGINEER will give written notice to OWNER and CONTRACTOR that the Work is acceptable, subject to the provisions of paragraph 13.10. Otherwise, ENGINEER will return the Application to CONTRACTOR, indicating in writing the reasons for refusing to recommend final payment, in which case CONTRACTOR shall make the necessary corrections and resubmit the Application.

13.8.2 Delay in Completion of Work

If, through no fault of CONTRACTOR, final completion of the Work is significantly delayed, OWNER shall, upon receipt of CONTRACTOR'S final Application for Payment and recommendation of ENGINEER, and without terminating the Agreement, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance to be held by OWNER for Work not fully completed or corrected is less than the

retainage stipulated in the Agreement, and if Bonds have been furnished as required in paragraph 10 of Part II, Information for Bidders, the written consent of the surety to the payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by CONTRACTOR to ENGINEER with the Application for such payment. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

13.9 CONTRACTOR'S Continuing Obligation

CONTRACTOR'S obligation to perform and complete the Work in accordance with the Contract Documents shall be absolute. Neither recommendation of any progress or final payment by ENGINEER, nor the issuance of a certificate of Completion, nor any payment by OWNER to CONTRACTOR under the Contract Documents, nor any use or occupancy of the Work or any part thereof by OWNER, nor any act of acceptance by OWNER nor any failure to do so, nor any review and approval of a Shop Drawing or sample submission, nor any correction of defective Work by OWNER will constitute an acceptance of Work not in accordance with the Contract Documents or a release of CONTRACTOR'S obligation to perform the Work in accordance with the Contract Documents (except as provided in paragraph 13.10).

13.10 Waiver of Claims

The making and acceptance of final payment will constitute:

13.10.1 a waiver of all claims by OWNER against CONTRACTOR, except claims arising from unsettled Liens, from defective Work appearing after final inspection or from failure to comply with the Contract Documents or the terms of any special guarantees specified therein; however, it will not constitute a waiver by OWNER of any rights in respect of CONTRACTOR'S continuing obligations under the Contract Documents; and

13.10.2 a waiver of all claims by CONTRACTOR against OWNER other than those previously made in writing and still unsettled.

14. SUSPENSION OF WORK AND TERMINATION

14.1 OWNER May Suspend Work

OWNER may, at any time and without cause, suspend the Work or any portion thereof for a period of not more than ninety days by notice in writing to CONTRACTOR and ENGINEER which will fix the date on which Work will be resumed. CONTRACTOR shall resume the Work on the date so fixed. CONTRACTOR shall be allowed an increase in the Contract Price or an extension of the Contract Time, or both, directly attributable to any suspension if CONTRACTOR makes an approved claim therefor as provided in Articles 10 and 11.

14.2 OWNER May Terminate

The OWNER may terminate the Work upon the occurrence of any one or more of the following events:

14.2.1 if CONTRACTOR commences a voluntary case under any chapter of the Bankruptcy Code (Title 11, United States Code), as now or hereafter in effect, or if CONTRACTOR takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such time relating to the bankruptcy or insolvency;

14.2.2 if a petition is filed against CONTRACTOR under any chapter of the Bankruptcy Code as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar relief against CONTRACTOR under any other federal or state law in effect at the time relating to bankruptcy or insolvency;

14.2.3 if CONTRACTOR makes a general assignment for the benefit of creditors;

14.2.4 if a trustee, receiver, custodian or agent of CONTRACTOR is appointed under applicable law or under contract, whose appointment or authority to take charge of property of CONTRACTOR is for the purpose of enforcing a Lien against such property or for the purpose of general administration of such property for the benefit of CONTRACTOR'S creditors;

14.2.5 if CONTRACTOR admits in writing an inability to pay its debts generally as they become due;

14.2.6 if CONTRACTOR persistently fails to perform the Work in accordance with the Contract Documents (including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to adhere to the progress schedule established under paragraph 2.8 as revised from time to time);

14.2.7 if CONTRACTOR disregards Laws or Regulations of any public body having jurisdiction;

14.2.8 if CONTRACTOR disregards the authority of ENGINEER, or

14.2.9 if CONTRACTOR otherwise violates in any substantial way any provisions of the Contract Documents;

OWNER may, after giving CONTRACTOR (and the surety) seven days' written notice and to the extent permitted by Laws and Regulations, terminate the services of CONTRACTOR, exclude CONTRACTOR from the site and take possession of the Work and of all CONTRACTOR'S tools, appliances,

construction equipment and machinery at the site and use the same to the full extent they could be used by CONTRACTOR (without liability to CONTRACTOR for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which OWNER has paid CONTRACTOR but which are stored elsewhere, and finish the Work as OWNER may deem expedient. In such case CONTRACTOR shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds the direct, indirect and consequential costs of completing the Work (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court and arbitration costs) such excess will be paid to CONTRACTOR. If such costs exceed such unpaid balance, CONTRACTOR shall pay the difference to OWNER. Such costs incurred by OWNER will be approved as to reasonableness by ENGINEER and incorporated in a Change Order, but when exercising any rights or remedies under this paragraph OWNER shall not be required to obtain the lowest price for the Work performed.

14.2.10 If safety violations are observed and brought to the Contractors attention and Contractor fails to take immediate corrective measures any repeat of similar safety violations, Owner will order an immediate termination of contract. Note: it is the Contractor's responsibility to know proper safety measures as they pertain to construction and OSHA.

14.2.11 This contract may be canceled by either party thirty (30) days after delivery by canceling party of written notice of intent to cancel to the other contracting party.

14.2.12 This contract may be canceled by the Lexington-Fayette Urban County Government if it is determined that the Bidder has failed to perform under the terms of this agreement, such cancellation to be effective upon receipt of written notice of cancellation by the Bidder.

14.3 CONTRACTOR'S Services Terminated

Where CONTRACTOR'S services have been so terminated by OWNER, the termination will not affect any rights or remedies of OWNER against CONTRACTOR then existing or which may thereafter accrue. Any retention or payment of moneys due CONTRACTOR by OWNER will not release CONTRACTOR from liability.

14.4 Payment After Termination

Upon seven days' written notice to CONTRACTOR, OWNER may, without cause and without prejudice to any other right or remedy, elect to abandon the Work and terminate the Agreement. In such case, CONTRACTOR shall be paid for all Work executed and any expense sustained plus reasonable termination expenses, which will include, but not be limited to, direct, indirect and consequential costs (including, but

not limited to, fees and charges of engineers, architects, attorneys and other professionals and court and arbitration costs).

14.5 CONTRACTOR May Stop Work or Terminate

If, through no act or fault of CONTRACTOR, the Work is suspended for a period of more than ninety days by OWNER or under an order of court or other public authority, or ENGINEER fails to act on any Application for Payment within sixty days after it is submitted, or OWNER fails for sixty days to pay CONTRACTOR any sum finally determined to be due, then CONTRACTOR may, upon seven days' written notice to OWNER and ENGINEER, terminate the Agreement and recover from OWNER payment for all Work executed and any expense sustained plus reasonable termination expenses. In addition and in lieu of terminating the Agreement, if ENGINEER has failed to act on an Application for Payment or OWNER has failed to make any payment as aforesaid, CONTRACTOR may upon seven days' written notice to OWNER and ENGINEER stop the Work until payment of all amounts then due. The provisions of this paragraph shall not relieve CONTRACTOR of the obligations under paragraph 5.16 to carry on the Work in accordance with the progress schedule and without delay during disputes and disagreements with OWNER.

15. MISCELLANEOUS

15.1 Claims for Injury or Damage

Should OWNER or CONTRACTOR suffer injury or damage to person or property because of any error, omission or act of the other party or of any of the other party's employees or agents or others for whose acts the other party is legally liable, claim will be made in writing to the other party within a reasonable time of the first observance of such injury or damage. The provisions of this paragraph 15.1 shall not be construed as a substitute for or a waiver of the provisions of any applicable statute of limitations or repose.

15.2 Non-Discrimination in Employment

The CONTRACTOR shall comply with the following requirements prohibiting discrimination:

15.2.1 That no person (as defined in KRS 344.010) shall bid on Lexington-Fayette Urban County Government construction projects, or bid to furnish materials or supplies to the Lexington-Fayette Urban County Government, if, within six months prior to the time of opening of bids, said person shall have been found, by declaratory judgment action in Fayette Circuit Court, to be presently engaging in an unlawful practice, as hereinafter defined. Such declaratory judgment action may be brought by an aggrieved individual or upon an allegation that an effort at conciliation pursuant to KRS 344.200 has been attempted and failed, by the Lexington-Fayette County Human Rights Commission.

15.2.2 That it is an unlawful practice for an employer:

15.2.2.1 to fail or refuse to hire, or to discharge any individual or otherwise to discriminate against an individual, with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, age, or national origin; or

15.2.2.2 to limit, segregate or classify his employees in any way which would deprive or tend to deprive an individual of employment opportunities or otherwise adversely affect his status as an employee because of such individual's sex, race, color, religion, age, or national origin.

15.2.3 That it is an unlawful practice for an employer, labor organization, or joint-labor management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against an individual because of his race, color, religion, sex, age, or national origin in admission to, or employment in, any program established to provide apprenticeship or other training.

15.2.4 That a copy of this Ordinance shall be furnished all suppliers and made a part of all bid specifications.

15.2.5 This Ordinance shall take effect after it is signed, published and recorded, as required by law.

15.3 Temporary Street Closing or Blockage

The CONTRACTOR will notify the ENGINEER at least 72 hours prior to making any temporary street closing or blockage. This will permit orderly notification to all concerned public agencies. Specific details and restrictions on street closure or blockage are contained in the Special Conditions.

15.4 Percentage of Work Performed by prime CONTRACTOR

The CONTRACTOR shall perform on site, and with its own organization, Work equivalent to at least fifty (50%) percent of the total amount of Work to be performed under the Contract. This percentage may be reduced by a supplemental agreement to this Contract if, during performing the Work, the CONTRACTOR requests a reduction and the ENGINEER determines that the reduction would be to the advantage of the OWNER.

15.5 Clean-up

Clean-up shall progress, to the greatest degree practicable, throughout the course of the Work. The Work will not be considered as completed, and final payment will not be made, until the right-of-way and all ground occupied or affected by the Contractor in connection with the Work has been cleared of all rubbish, equipment, excess

materials, temporary structures, and weeds. Rubbish and all waste materials of whatever nature shall be disposed of, off of the project site, in an acceptable manner. All property, both public and private, which has been damaged in the prosecution of the Work, shall be restored in an acceptable manner. All areas shall be draining, and all drainage ways shall be left unobstructed, and in such a condition that drift will not collect or scour be induced.

15.6 General

The duties and obligations imposed by these General Conditions and the rights and remedies available hereunder to the parties hereto, and, in particular but without limitation, the warranties, guarantees and obligations imposed upon CONTRACTOR by paragraphs 12.1, 12.3.5, 13.3, and 15.2 and all of the rights and remedies available to OWNER and ENGINEER thereunder, are in addition to, and are not to be construed in any way as a limitation of, any rights and remedies available to any or all of them which are otherwise imposed or available by Laws or Regulations, by special warranty or guarantee or by other provisions of the Contract Documents, and the provisions of this paragraph will be as effective as if repeated specifically in the Contract Documents in connection with each particular duty, obligation, right and remedy to which they apply. All representations, warranties and guarantees made in the Contract Documents will survive final payment and termination or completion of the Agreement.

15.7 Debris Disposal

For all LFUCG projects any trash, construction demolition debris, yard waste, dirt or debris of any kind that is removed from the project site must be disposed of in accordance with local, state, and federal regulations. The disposal site or facility must be approved in advance by the LFUCG and disposal documentation is required. The Contractor will be responsible for payment of any fines associated with improper disposal of material removed from the project site.

END OF SECTION

PART V
SPECIAL CONDITIONS
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2	RISK MANAGEMENT PROVISIONS – INSURANCE AND INDEMNIFICATION	SC-3
3	WAGE SCALE (if applicable)	SC-7

1. BLASTING

Blasting shall only be allowed with the specific written permission from the OWNER and the CONTRACTOR will be fully responsible and will be required to provide additional insurance.

Blasting is only allowed by a licensed blaster in compliance with the State of Kentucky Laws, KRS Section 351.310 – 351.340 and applicable rules and regulations issued by the Department of Mines and Minerals.

CONTRACTOR shall notify each property owner and public utility company having structures or facilities in proximity to the site of the work of the intent to use explosives. Give such notice sufficiently in advance to enable those being notified to take the necessary steps to protect their property from injury. CONTRACTOR will be liable for any and all damages and claims made as a result of his blasting operations.

CONTRACTOR shall preserve the original bearing value of rock located under proposed structure foundations from damage be blasting, by concussion from the blasting or by excessive breakage. The CONTRACTOR shall bear any increase in structure costs caused by blasting damage to rock under proposed foundations.

2.

**RISK MANAGEMENT PROVISIONS
INSURANCE AND INDEMNIFICATION**

INDEMNIFICATION AND HOLD HARMLESS PROVISION

- (1) It is understood and agreed by the parties that Contractor hereby assumes the entire responsibility and liability for any and all damages to persons or property caused by or resulting from or arising out of any act or omission on the part of Contractor or its employees, agents, servants, owners, principals, licensees, assigns or subcontractors of any tier (hereinafter "CONTRACTOR") under or in connection with this agreement and/or the provision of goods or services and the performance or failure to perform any work required thereby.
- (2) CONTRACTOR shall indemnify, save, hold harmless and defend the Lexington-Fayette Urban County Government and its elected and appointed officials, employees, agents, volunteers, and successors in interest (hereinafter "LFUCG") from and against all liability, damages, and losses, including but not limited to, demands, claims, obligations, causes of action, judgments, penalties, fines, liens, costs, expenses, interest, defense costs and reasonable attorney's fees that are in any way incidental to or connected with, or that arise or are alleged to have arisen, directly or indirectly, from or by CONTRACTOR's performance or breach of the agreement and/or the provision of goods or services provided that: (a) it is attributable to personal injury, bodily injury, sickness, or death, or to injury to or destruction of property (including the loss of use resulting therefrom), or to or from the negligent acts, errors or omissions or willful misconduct of the CONTRACTOR; and (b) not caused solely by the active negligence or willful misconduct of LFUCG.
- (3) In the event LFUCG is alleged to be liable based upon the above, CONTRACTOR shall defend such allegations and shall bear all costs, fees and expenses of such defense, including but not limited to, all reasonable attorneys' fees and expenses, court costs, and expert witness fees and expenses, using attorneys approved in writing by LFUCG, which approval shall not be unreasonably withheld.
- (4) These provisions shall in no way be limited by any financial responsibility or insurance requirements, and shall survive the termination of this agreement.
- (5) The work and services performed hereunder involve a CONSENT DECREE as further explained in Part 1-Advertisement for Bids, provision 13. These provisions are incorporated herein by reference as if expressly stated.
- (6) LFUCG is a political subdivision of the Commonwealth of Kentucky. CONTRACTOR acknowledges and agrees that LFUCG is unable to provide indemnity or otherwise save, hold harmless, or defend the CONTRACTOR in any manner.

FINANCIAL RESPONSIBILITY

BIDDER/CONTRACTOR understands and agrees that it shall, prior to final acceptance of its bid and the commencement of any work, demonstrate the ability to assure compliance with the above Indemnity provisions and these other risk management provisions.

INSURANCE REQUIREMENTS

YOUR ATTENTION IS DIRECTED TO THE INSURANCE REQUIREMENTS BELOW, AND YOU MAY NEED TO CONFER WITH YOUR INSURANCE AGENTS, BROKERS, OR CARRIERS TO DETERMINE IN ADVANCE OF SUBMISSION OF A RESPONSE THE AVAILABILITY OF THE INSURANCE COVERAGES AND ENDORSEMENTS REQUIRED HEREIN. IF YOU FAIL TO COMPLY WITH THE INSURANCE REQUIREMENTS BELOW, YOU MAY BE DISQUALIFIED FROM AWARD OF THE CONTRACT.

Required Insurance Coverage

BIDDER/CONTRACTOR shall procure and maintain for the duration of this contract the following or equivalent insurance policies at no less than the limits shown below and cause its subcontractors to maintain similar insurance with limits acceptable to LFUCG in order to protect LFUCG against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder by CONTRACTOR. The cost of such insurance shall be included in any bid:

<u>Coverage</u>	<u>Limits</u>
General Liability aggregate (Insurance Services Office Form CG 00 01)	\$1 million per occurrence, \$2 million or \$2 million combined single limit
Commercial Automobile Liability occurrence (Insurance Services Office Form CA 0001)	combined single, \$1 million per occurrence
Worker's Compensation	Statutory
Employer's Liability	\$500,000.00

The policies above shall contain the following conditions:

- a. All Certificates of Insurance forms used by the insurance carrier shall be properly filed and approved by the Department of Insurance for the Commonwealth of Kentucky (DOI). LFUCG shall be named as an additional insured in the General Liability Policy and Commercial Automobile Liability Policy using the Kentucky DOI approved forms.
- b. The General Liability Policy shall be primary to any insurance or self-insurance retained by LFUCG.
- c. The General Liability Policy shall include a Products and Completed Operations endorsement or Premises and Operations Liability endorsement unless it is deemed not to apply by LFUCG.
- d. The General Liability Policy shall include an Explosion-Collapse Underground (XCU) endorsement.

- e. The General Liability Policy shall include a Pollution liability and/or Environmental Casualty endorsement unless it is deemed not to apply by LFUCG.
- f. LFUCG shall be provided at least 30 days advance written notice via certified mail, return receipt requested, in the event any of the required policies are canceled or non-renewed.
- g. Said coverage shall be written by insurers acceptable to LFUCG and shall be in a form acceptable to LFUCG. Insurance placed with insurers with a rating classification of no less than Excellent (A or A-) and a financial size category of no less than VIII, as defined by the most current Best's Key Rating Guide shall be deemed automatically acceptable.
- h. Owner requests that the Bidder obtain an Umbrella Liability endorsement to the CGL policy for a limit of liability of \$ **NA** and that this CGL policy endorsement be renewed for one (1) year after completion of this project.

Renewals

After insurance has been approved by LFUCG, evidence of renewal of an expiring policy must be submitted to LFUCG, and may be submitted on a manually signed renewal endorsement form. If the policy or carrier has changed, however, new evidence of coverage must be submitted in accordance with these Insurance Requirements.

Deductibles and Self-Insured Programs

IF YOU INTEND TO SUBMIT A SELF-INSURANCE PLAN IT MUST BE FORWARDED TO LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, DIVISION OF RISK MANAGEMENT, 200 EAST MAIN STREET, LEXINGTON, KENTUCKY 40507 NO LATER THAN A MINIMUM OF FIVE (5) WORKING DAYS PRIOR TO THE RESPONSE DATE.

Self-insurance programs, deductibles, and self-insured retentions in insurance policies are subject to separate approval by Lexington-Fayette Urban County Government's Division of Risk Management, upon review of evidence of BIDDER/CONTRACTOR's financial capacity to respond to claims. Any such programs or retentions must provide LFUCG with at least the same protection from liability and defense of suits as would be afforded by first-dollar insurance coverage. If BIDDER/CONTRACTOR satisfies any portion of the insurance requirements through deductibles, self-insurance programs, or self-insured retentions, BIDDER/CONTRACTOR agrees to provide Lexington-Fayette Urban County Government, Division of Risk Management, the following data prior to the final acceptance of bid and the commencement of any work:

- a. Latest audited financial statement, including auditor's notes.
- b. Any records of any self-insured trust fund plan or policy and related accounting statements.
- c. Actuarial funding reports or retained losses.
- d. Risk Management Manual or a description of the self-insurance and risk management program.

- e. A claim loss run summary for the previous five (5) years.
- f. Self-Insured Associations will be considered.

Safety and Loss Control

CONTRACTOR shall comply with all applicable federal, state, and local safety standards related to the performance of its works or services under this Agreement and take necessary action to protect the life, health and safety and property of all of its personnel on the job site, the public, and LFUCG.

Verification of Coverage

BIDDER/CONTRACTOR agrees to furnish LFUCG with all applicable Certificates of Insurance signed by a person authorized by the insurer to bind coverage on its behalf prior to final award, and if requested, shall provide LFUCG copies of all insurance policies, including all endorsements.

Right to Review, Audit and Inspect

CONTRACTOR understands and agrees that LFUCG may review, audit and inspect any and all of its records and operations to insure compliance with these Insurance Requirements.

DEFAULT

BIDDER/CONTRACTOR understands and agrees that the failure to comply with any of these insurance, safety, or loss control provisions shall constitute default and that LFUCG may elect at its option any single remedy or penalty or any combination of remedies and penalties, as available, including but not limited to purchasing insurance and charging BIDDER/CONTRACTOR for any such insurance premiums purchased, or suspending or terminating the work.

3. **WAGE SCALES – Not applicable.**

END OF SECTION

PART VI
CONTRACT AGREEMENT

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3. ISSUANCE OF WORK ORDERS
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PART VI

CONTRACT AGREEMENT

THIS AGREEMENT, made on the 7th day of February, 2023, by and between **Lexington-Fayette Urban County Government**, acting herein called "OWNER" and Hydromax USA, LLC, doing business as *(an individual) (a partnership) (a corporation) located in the City of Flower Mound, County of Denton, and State of Texas, hereinafter called "CONTRACTOR."

WITNESSETH: That the CONTRACTOR and the OWNER in consideration of One Hundred Fifty Five Thousand Four Hundred Four Cents (\$ 155,404.00) quoted in the proposal by the CONTRACTOR, dated 2/17/2023, hereby agree to commence and complete the construction described as follows:

1. SCOPE OF WORK

The CONTRACTOR shall furnish all the materials, supplies, machinery, equipment, tools, superintendence, labor, insurance, and other accessories and services necessary to complete the said project in accordance with the conditions and prices stated in the Proposal, the General Conditions, and the Special Conditions of the Contract, the Specifications and Contract Documents therefore as prepared by Stantec Consulting Services for the **2023 CAPACITY ASSURANCE PROGRAM FLOW MONITORING FIELD SERVICES** bid #122-2022.

2. TIME OF COMPLETION AND LIQUIDATED DAMAGES

The time period estimated and authorized by the OWNER for the proper execution of the Work by the Contract, in full, is hereby fixed as **two hundred ten (210)** calendar days. The time shall begin **ten (10)** days after the CONTRACTOR is given the Notice to Proceed with the Work. **TIME IS OF THE ESSENCE IN THE PERFORMANCE OF THIS AGREEMENT AND CONTRACTOR SHALL BE LIABLE AND RESPONSIBLE FOR DAMAGES SUFFERED BY OWNER AS A RESULT OF THE DELAY CAUSED BY CONTRACTOR.**

Should the contractor fail or refuse to complete the work within the time specified in his Proposal and/or Contract (or extension of time granted by the owner), the Contractor shall pay liquidated damages in an amount of **\$400.00 per day**. The amount of liquidated damages shall in no event be considered as a penalty, nor other than an amount agreed upon by the Contractor and the Owner for damages, loses, additional engineering, additional resident representation and other cost that will be sustained by the owner, if the Contractor fails to complete the work within the specified time. Liquidated damages will be applied on a rate per day for each and every calendar day (Sundays and holidays included) beyond the Contract expiration date stipulated in the Contract Documents, considering all time extension granted. **These Liquidated Damages are in addition to any other damages/fees/penalties that are incurred as a result of Consent Decree requirements.**

3. ISSUANCE OF WORK ORDERS

Notice to begin Work will be given in whole or for part of the Work as determined by the OWNER pending the availability of funds. The order of construction will be as determined by the Engineer after consultation with the CONTRACTOR and the OWNER.

4. THE CONTRACT SUM

The OWNER agrees to pay the CONTRACTOR in current funds for the performance of the Contract, as quoted in the proposal, subject to any additions and deductions, as provided therein.

5. PROGRESS PAYMENTS

The OWNER shall make payments on account of the Contract, as provided in accordance with the General Conditions, as estimated by the Engineer, less the aggregate of previous payments.

6. ACCEPTANCE AND FINAL PAYMENT

Final payment shall be due within ninety (90) days after completion of the Work, provided the Work be then fully completed and the Contract fully accepted.

Before issuance of final certificate, the CONTRACTOR shall submit evidence satisfactory to the Engineer that all payrolls, material bills, and other indebtedness connected with the Work has been paid.

If, after the Work has been substantially completed, full completion thereof is materially delayed through no fault of the CONTRACTOR, and the ENGINEER so certifies, the OWNER shall upon certificate of the ENGINEER, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. Such payment shall be made under the terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

7. THE CONTRACT DOCUMENTS

The Advertisement for Bids, Information for Bidders, the General Conditions, Performance and Payment Bonds, Contract Agreement, Special Conditions, Technical Specifications, any and all Addenda, and Proposal, and Plan Drawings form the Contract, and they are fully a part of the Contract as if hereto attached or herein repeated.

8. EXTRA WORK

The OWNER, without invalidating the Contract, may order extra work or make changes by altering, adding to or deducting from the Work, the Contract Sum being adjusted accordingly. All such Work shall be executed and paid for in accordance with the General Conditions, which is a part of this Contract.

9. CONSENT DECREE REQUIREMENTS

9.1 OWNER, the United States Environmental Protection Agency, and the Commonwealth of Kentucky have entered into a Consent Decree in a case styled *United States, et al. v. Lexington-Fayette Urban County Government*, United States District Court for the Eastern District of Kentucky, Case No. 5:06-CV-00386 (“CONSENT DECREE”), that requires OWNER to complete numerous projects related to its sanitary sewer system and storm water management program within specific periods of time.

9.2 TIME IS OF THE ESSENCE IN THE PERFORMANCE OF THIS AGREEMENT. CONTRACTOR is aware that the OWNER is subject to penalties for non-compliance with the CONSENT DECREE deadlines. The CONTRACTOR shall be specifically liable and responsible for payment of any and all penalties, fines, or fees assessed against or incurred by the OWNER as a result of any delay in, or non-performance of, any of the CONTRACTOR’s obligations or responsibilities under this Contract, or for any other damages suffered by OWNER as a result of such delay or non-performance. This shall specifically include, but shall not be limited to, any penalty, fine, fee, or assessment against the OWNER by the U.S. Department of Justice, U.S. Environmental Protection Agency, and/or the Kentucky Energy and Environment Cabinet related to the Consent Decree.

9.3 The provisions of this Section and the various rates of compensation for CONTRACTOR's services provided for elsewhere in this Agreement have been agreed to in anticipation of the orderly and continuous progress of the PROJECT through completion.

9.4 If delays result by reason of acts of the OWNER or approving agencies, which are beyond the control of the CONTRACTOR, an extension of time for such delay will be considered. If delays occur, the CONTRACTOR shall immediately notify the OWNER, and within five (5) business days from the date of the delay apply in writing to the OWNER for an extension of time for such reasonable period as may be mutually agreed upon between the parties, and if approved, the PROJECT schedule shall be revised to reflect the extension. Such extension of time to the completion date shall in no way be construed to operate as a waiver on the part of the OWNER of any of its rights in the Agreement. Section 9.6 of this Agreement (Disputes) shall apply in the event the parties cannot agree upon an extension of time.

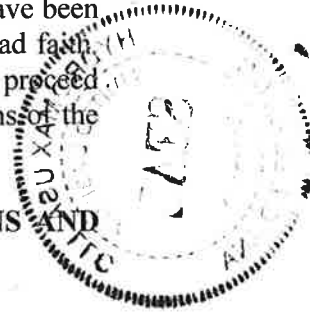
In the event that the overall delay resulting from the above-described causes is sufficient to prevent complete performance of the Agreement within six (6) months of the time specified herein, the fees to be paid to CONTRACTOR shall be subject to adjustment as agreed upon by the parties. Section 9.6 of this Agreement shall apply in the event the parties cannot agree upon an adjustment of fee.

9.5 If delays result solely by reason of acts of the CONTRACTOR, the CONTRACTOR shall be held liable for any financial penalties incurred by the OWNER as a result of the delay, including but not limited to those assessed pursuant to the CONSENT DECREE as provided in Section 9.2, above. Section 9.6 of this Agreement (Disputes), shall apply in the event the parties cannot mutually agree upon the cause(s) associated with delays

in completing project deliverables. The CONTRACTOR must immediately notify the OWNER in the event of such delay, and provide the OWNER a written action plan within five (5) business days on how it will attempt to resolve the delay.

9.6 DISPUTES

Except as otherwise provided in this Agreement, any dispute hereunder may be resolved by agreement of the OWNER's Agent (Charles H. Martin, P.E., Director of Water Quality) and the CONTRACTOR. In the absence of such an agreement, the dispute shall be submitted to the OWNER's Commissioner, Department of Environmental Quality, whose decision shall be final and conclusive unless determined by a court of competent jurisdiction to have been fraudulent, capricious, arbitrary, or so grossly erroneous as necessarily to imply bad faith. Pending a final decision of a dispute hereunder, the CONTRACTOR shall proceed diligently with the performance of the Agreement in accordance with the directions of the OWNER.



10. THE FOLLOWING IS AN ENUMERATION OF THE SPECIFICATIONS AND DRAWINGS (CONTRACT DOCUMENTS):

SPECIFICATIONS

SECTION NO.	TITLE	PAGES
I	Advertisement for Bids	AB 1 thru 6
II	Information for Bidders	IB 1 thru 10
III	Form of Proposal	P 1 thru 36
IV	General Conditions	GC 1 thru 50
V	Special Conditions	SC 1 thru 6
VI	Contract Agreement	CA 1 thru 6
VII	Performance and Payment Bonds	PB 1 thru 7
VIII	Addenda	AD 1 thru 1
IX	Technical Specifications	TS 1 thru 26

IN WITNESSETH WHEREOF, the parties hereto have executed this Contract as of the date and year above written.

(Seal)

Lexington-Fayette Urban County Government.
Lexington, Kentucky

(Owner)

ATTEST:

Mackenzie Stock
Clerk of the Urban County Council

BY: *Rinda Gorton*
MAYOR

[Signature]
(Witness)

Mayor
(Title)

Naugh B. Benley
(Secretary)*

[Signature]
(Contractor)

Cheryl L. [Signature]
(Witness)

BY: *[Signature]*
CEO
(Title)

3700 River Walk Dr., Flower Mound, TX, 75028
(Address and Zip Code)

IMPORTANT: *Strike out any non-applicable terms.

Secretary of the Owner should attest. If the CONTRACTOR is corporation, Secretary should attest. Give proper title of each person-executing Contract.

PART VII
PERFORMANCE BOND

KNOW ALL MEN BY THESE PRESENTS, that

Hydromax USA, LLC

(Name of CONTRACTOR)

3700 River Walk Dr., Flower Mound, TX, 75028

(Address of CONTRACTOR)

a _____ Corporation, hereinafter
(Corporation, Partnership, or Individual)

called Principal, and Atlantic Specialty Insurance Company
(Name of Surety)

605 Highway 169 North, Suite 800, Plymouth, MN 55441

(Address of Surety)

hereinafter called Surety, are held and firmly bound unto

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT
200 East Main Street, Third Floor
Lexington, Kentucky 40507

hereinafter called "OWNER" in the penal sum of: One Hundred Fifty Five Thousand Four Hundred Four and 00/00 Dollars, (\$ 155,404.00), for the payment of whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal by written agreement is entering into a Contract with OWNER for 2023 CAPACITY ASSURANCE PROGRAM FLOW MONITORING FIELD SERVICES in accordance with drawings and specifications prepared by: Stantec Consulting Services which Contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW THEREFORE, THE CONDITION OF THIS OBLIGATION is such that if the Principal shall promptly and faithfully perform said Contract, then this obligation shall be null and void; otherwise it shall remain in full force and effect.

The Surety hereby waives notice of any alteration or extension of time made by the OWNER.

Whenever, Principal shall be, and declared by OWNER to be in default under the Contract, the OWNER having performed OWNER'S obligations thereunder, the Surety may promptly remedy the default, or shall promptly:

- (1) Complete the Contract in accordance with its terms and conditions or
- (2) Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by Surety of the lowest responsible bidder, or if the OWNER elects, upon determination by the OWNER and Surety jointly of the lowest responsible bidder, arrange for a Contract between such bidder and OWNER, and make available as Work progresses (even though there may be a default or a succession of defaults under the Contract or Contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract Price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, the amount set forth in the first paragraph hereof. The term "balance of the Contract Price", as used in this paragraph shall mean the total amount payable by OWNER to Principal under the Contract and any amendments thereto, less the amount properly paid by OWNER to Principal.

Any suit under this bond must be instituted before the expiration of two (2) years from the date on which final payment under the Contract falls due.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the OWNER named herein or the heirs, executors, administrators or successors of OWNER.

IN WITNESS WHEREOF, this instrument is executed in Three (3) counterparts, each one of (number)

which shall be deemed an original, this the 7th day of February, 2023.

ATTEST:

Cheryl [Signature]
(Principal) Secretary

Hydromax USA, LLC

Principal

BY: *[Signature]* (S)

3700 River Walk Dr.

(Address)

Flower Mound, TX, 75028

David [Signature]
Witness as to Principal

3700 River Walk Dr.

(Address)

Flower Mound, TX, 75028

ATTEST:

John W. McGuire
(Surety) Secretary John W. McGuire

Atlantic Specialty Insurance Company

Surety

BY: *[Signature]*

Attorney-in-Fact William Kreidinger

605 Highway 169 North, Suite 800

(Address)

Plymouth, MN 55441



(SEAL)

Cassidy Kelly
Witness as to Surety Cassidy Kelly

20 N. Martingale Rd., Floor

(Address)

Schaumburg, IL 60173

TITLE: Not Applicable

Surety

BY: Not Applicable

TITLE: Not Applicable

NOTE: The number of executed counterparts of the bond shall coincide with the number of executed counterparts of the Contract.

PART VII
PAYMENT BOND

KNOW ALL MEN BY THESE PRESENT: that

Hydromax USA, LLC

(Name of Contractor)

3700 River Walk Dr., Flower Mound, TX, 75028

(Address of Contractor)

a _____, hereinafter
Corporation
(Corporation, Partnership or Individual)

called Principal, and Atlantic Specialty Insurance Company

(Name of Surety)

605 Highway 169 North, Suite 800, Plymouth, MN 55441

(Address of Surety)

hereinafter called Surety, are held and firmly bound unto:

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT
200 East Main Street, Third Floor
Lexington, Kentucky 40507

Obligee, hereinafter called OWNER, for the use and benefit of claimants as hereinafter defined, in the amount of One Hundred Fifty Five Thousand Four Hundred Four and 00/100 Dollars (\$ 155,404.00) the payment whereof Principal and Surety bind themselves, their heirs, executors, administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, Principal by written agreement is entering into a Contract with OWNER for **2023 CAPACITY ASSURANCE PROGRAM FLOW MONITORING FIELD SERVICES** in accordance with drawings and specifications prepared by: Stantec Consulting Services which Contract is by reference made a part hereof, and is hereinafter referred to as the Contract.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION is such that, if Principal shall promptly make payment to all claimants as hereinafter defined for all labor and material used or reasonably required for use in the performance of the Contract, then this obligation shall be void; otherwise it shall remain in full force and effect, subject, however, to the following conditions.

1. A claimant is defined as one having a direct contract with the Principal or with a Subcontractor of the Principal for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.

2. The above named Principal and Surety hereby jointly and severally agree with the OWNER that every claimant as herein defined, who has not been paid in full before the expiration of a period of ninety (90) days after the date on which the last of such claimant's work or labor was done or performed, or materials were furnished by such claimant, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The OWNER shall not be liable for the payment of any costs or expenses of any such suit.
3. No suit or action shall be commenced hereunder by any claimant:
 - (a) Unless claimant, other than one having a direct contract with the Principal, shall have given written notice to any two of the following: The Principal, the OWNER, or the Surety above named, within ninety (90) days after such claimant did or performed the last of the Work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the Work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in an envelope addressed to the Principal, OWNER, or Surety, at any place where an office is regularly maintained for the transaction of business, or served in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer.
 - (b) After the expiration of one (1) year following the date on which Principal ceased Work on said Contract, it being understood, however, that if any limitation embodied in this bond is prohibited by any law controlling the construction hereof such limitation shall be deemed to be amended so as to be equal to the minimum period of limitation permitted by such law.
 - (c) Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the project, or any part thereof, is situated, or in the United States District Court for the district in which the project, or any part thereof, is situated, and not elsewhere.
4. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanics' liens which may be filed of record against aid improvement, whether or not claim for the amount of such lien be presented under and against this bond.

IN WITNESS WHEREOF, this instrument is executed in Three (3) counterparts, each one of (number)

which shall be deemed an original, this the 7th day of February, 2023

ATTEST:

[Signature]
(Principal) Secretary

(SEAL)

[Signature]
(Witness to Principal)

3700 River Walk Dr.
(Address)
Flower Mound, TX 75028

Hydromax USA, LLC
(Principal)

BY: [Signature] (s)

3700 River Walk Dr.
(Address)
Flower Mound, TX 75028

ATTEST:

[Signature]
(Surety) Secretary John W. McGuire

(SEAL)

[Signature]
Witness as to Surety Cassidy Kelly
20 N. Martingale Rd., Floor 1
(Address)
Schaumburg, IL 60173

Atlantic Specialty Insurance Company
(Surety)

BY: [Signature]
William Reidinger (Attorney-in-Fact)



605 Highway 169 North, Suite 800
(Address)
Plymouth, MN 55441

NOTE: The number of executed counterparts of the bond shall coincide with the number of executed counterparts of the Contract.

END OF SECTION

State of ... Illinois
County of DuPage ss.:

Surety
Company
Acknowledgment:

On this 7th day of ... February 2023 .., before me personally appeared ... William Reidinger, to be known, whom being by me duly sworn, did depose and say: that he/she resides at ... Schaumburg, IL, that he/she is the Attorney In Fact of ... Atlantic Specialty Insurance Company, the corporation described in and which executed the annexed instrument; that he/she knows the corporate seal of said corporation that the seal affixed to said instrument is such corporate seal; that it was so affixed by order of the Board of Directors of said corporation; that he/she signed his/her name thereto by like order; and that the liabilities of said corporation do not exceed its assets as ascertained in the manner provided by law.

.....
Notary Public in and for the above County and State.

My commission expires 07/24/2023





Power of Attorney

Surety Bond No: 800144735

Principal: Hydromax USA, LLC

Obligee: Lexington-Fayette Urban County Governme Division of Purchasing

KNOW ALL MEN BY THESE PRESENTS, that ATLANTIC SPECIALTY INSURANCE COMPANY, a New York corporation with its principal office in Plymouth, Minnesota, does hereby constitute and appoint: William Reidinger, each individually if there be more than one named, its true and lawful Attorney-in-Fact, to make, execute, seal and deliver, for and on its behalf as surety, any and all bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof; provided that no bond or undertaking executed under this authority shall exceed in amount the sum of: sixty million dollars (\$60,000,000) and the execution of such bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof in pursuance of these presents, shall be as binding upon said Company as if they had been fully signed by an authorized officer of the Company and sealed with the Company seal. This Power of Attorney is made and executed by authority of the following resolutions adopted by the Board of Directors of ATLANTIC SPECIALTY INSURANCE COMPANY on the twenty-fifth day of September, 2012:

Resolved: That the President, any Senior Vice President or Vice-President (each an "Authorized Officer") may execute for and in behalf of the Company any and all bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof, and affix the seal of the Company thereto; and that the Authorized Officer may appoint and authorize an Attorney-in-Fact to execute on behalf of the Company any and all such instruments and to affix the Company seal thereto; and that the Authorized Officer may at any time remove any such Attorney-in-Fact and revoke all power and authority given to any such Attorney-in-Fact.

Resolved: That the Attorney-in-Fact may be given full power and authority to execute for and in the name and on behalf of the Company any and all bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof, and any such instrument executed by any such Attorney-in-Fact shall be as binding upon the Company as if signed and sealed by an Authorized Officer and, further, the Attorney-in-Fact is hereby authorized to verify any affidavit required to be attached to bonds, recognizances, contracts of indemnity, and all other writings obligatory in the nature thereof.

This power of attorney is signed and sealed by facsimile under the authority of the following Resolution adopted by the Board of Directors of ATLANTIC SPECIALTY INSURANCE COMPANY on the twenty-fifth day of September, 2012:

Resolved: That the signature of an Authorized Officer, the signature of the Secretary or the Assistant Secretary, and the Company seal may be affixed by facsimile to any power of attorney or to any certificate relating thereto appointing an Attorney-in-Fact for purposes only of executing and sealing any bond, undertaking, recognizance or other written obligation in the nature thereof, and any such signature and seal where so used, being hereby adopted by the Company as the original signature of such officer and the original seal of the Company, to be valid and binding upon the Company with the same force and effect as though manually affixed.

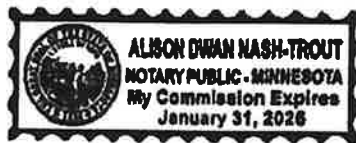
IN WITNESS WHEREOF, ATLANTIC SPECIALTY INSURANCE COMPANY has caused these presents to be signed by an Authorized Officer and the seal of the Company to be affixed this fifth day of March, 2020.



By *Paul J. Brehm*
Paul J. Brehm, Senior Vice President

STATE OF MINNESOTA
HENNEPIN COUNTY

On this fifth day of March, 2020, before me personally came Paul J. Brehm, Senior Vice President of ATLANTIC SPECIALTY INSURANCE COMPANY, to me personally known to be the individual and officer described in and who executed the preceding instrument, and he acknowledged the execution of the same, and being by me duly sworn, that he is the said officer of the Company aforesaid, and that the seal affixed to the preceding instrument is the seal of said Company and that the said seal and the signature as such officer was duly affixed and subscribed to the said instrument by the authority and at the direction of the Company.



Alison Nash-Trout
Notary Public

I, the undersigned, Assistant Secretary of ATLANTIC SPECIALTY INSURANCE COMPANY, a New York Corporation, do hereby certify that the foregoing power of attorney is in full force and has not been revoked, and the resolutions set forth above are now in force.

Signed and sealed. Dated 7th day of February, 2023.



Christopher V. Jerry
Christopher V. Jerry, Secretary



PART VIII

ADDENDA

All addenda issued during the bidding of the Project will be reproduced in the signed Contract Documents, on the pages following this heading sheet.

<u>Addendum Number</u>	<u>Title</u>	<u>Date</u>
1.	_____	_____
2.	_____	_____
3.	_____	_____
4.	_____	_____
5.	_____	_____

BID #122- 2022

2023 CAPACITY ASSURANCE PROGRAM
FLOW MONITORING FIELD SERVICES

PART IX

TECHNICAL SPECIFICATIONS

INDEX

SECTION 1	GENERAL SCOPE AND SPECIAL PROVISIONS
SECTION 2	FLOW MONITORING
SECTION 3	RAINFALL MONITORING
SECTION 4	SAMPLE FORMS

TECHNICAL SPECIFICATIONS

SECTION 1

GENERAL SCOPE & SPECIAL PROVISIONS

1.01 PURPOSE:

Annual rainfall and flow monitoring of the gravity sanitary sewer system is necessary to maintain compliance with the OWNER's Capacity Assurance Program (CAP), support hydraulic model maintenance, and verify effectiveness of completed sewer improvements and rehabilitation activities.

1.02 SCOPE OF WORK:

This contract includes performance of the following activities:

- A. Flow Monitoring. Install, calibrate, remove, operate and maintain flow monitoring equipment within the gravity sanitary sewer system at locations prescribed by the Engineer. (Refer to Section 2 of the Technical Specifications.)
- B. Rainfall Monitoring. Install, calibrate, remove, operate and maintain rainfall monitoring equipment at locations prescribed by the Engineer. (Refer to Section 3 of the Technical Specifications.)
- C. Reporting. Provide raw monitoring data collected at installed flow meters and rainfall gages to LFUCG on a monthly basis during the monitoring period. Provide a final report after the conclusion of the monitoring period that includes: final data (i.e. adjusted for any equipment or data errors), a site summary narrative and photographs for each installed location, and a summary of maintenance performed at each monitoring location including any data inaccuracies and performance issues encountered. (Refer to Section 2.14 and Section 3.11 of the Technical Specifications.)
- D. Meetings. Attend project kickoff and progress meetings as directed by LFUCG. (Refer to Section 1.20 of the Technical Specifications.)

The CONTRACTOR shall provide all materials, labor and equipment necessary for completion of the Contract. The Contract Documents are intended to provide the basis for proper completion of the work suitable for the intended use of the OWNER. Anything not expressly set forth, but which is reasonably implied, or necessary for proper performance of the Project shall be included.

1.03 DESIGNATION OF PARTIES:

All references in the specifications, contract documents and drawings to "OWNER" shall mean the Lexington-Fayette Urban County Government (LFUCG); all references to "ENGINEER" shall mean the LFUCG Division of Water Quality or authorized representative.

1.04 ACCESS TO AND INSPECTION OF WORK:

Representatives of the Kentucky Department of Health, the Kentucky Department for Natural Resources and Environmental Protection, U.S. Environmental Protection Agency, Lexington-Fayette Urban County Government or authorized representative, and the local public health agencies shall at all times have full access to the project sites for inspection of the work accomplished under this contract and for inspection of all materials intended for use under this contract. The CONTRACTOR shall provide proper facilities for such access and inspection.

1.05 UTILITIES REQUIRED BY CONTRACTOR:

All water, electric current and/or utility service required by the CONTRACTOR shall be furnished at his own expense.

1.06 TAXES, WORKMEN'S COMPENSATION AND PREVAILING WAGE:

Proposals shall be made to include any applicable taxes on payrolls, materials, equipment, vehicles, utilities, etc., including the Kentucky Sales Taxes and shall include compensation for such taxes on all work under this contract.

The CONTRACTOR will be required to accept liability for payment of all payroll taxes, sales and use tax, and all other taxes or deductions required by local, state or federal law, such as social security. The CONTRACTOR shall carry Workmen's Compensation Insurance to the full amounts as required by Statutes and shall include the cost of all foregoing items in the proposal. The CONTRACTOR will not otherwise be reimbursed or compensated for such tax payments. The CONTRACTOR is urged to ascertain at his own risk and actual tax liability in connection with the execution or performance of this contract.

Federal or state wage rates and regulations are not required for this Contract.

1.07 WORK ON PRIVATE PROPERTY:

- A. Private property is defined as property other than that belonging to the OWNER. Highway and railroad rights-of-way, public parks, schoolyards and other such properties shall be considered private residences and businesses for the purpose of this paragraph.
- B. The CONTRACTOR shall be responsible for any damages to public and/or private property resulting from any work under this contract. Other responsibilities involving access to work shall be as provided for in the General Conditions Part IV, 12.2.
- C. Fences, walls, hedges, shrubs (i.e. any and all landscaping), etc., shall be carefully, preserved, and or replaced if damaged when work is completed. No separate payment shall be allowed for removal and replacement of fencing as

necessary, to restrain livestock or domestic pets. Grassed areas, if damaged, shall be graded, fertilized and sodded when work is completed in accordance with the requirements of these Technical Specifications and is included in the cost of work to be done.

- D. It shall be the CONTRACTOR's responsibility to notify private property owners **A MINIMUM OF 48-HOURS** in advance prior to any site access. Notices must be distributed to these property owners. These notices will inform the resident the type of work being conducted. The names and addresses of notified private property owners shall be recorded on distribution logs and said logs shall be delivered to the Division of Water Quality prior to the commencement of work. If logs are not received, work cannot begin. Sample of notice and log forms are in Section 4 of the Technical Specifications.

1.08 RIGHT-OF-WAY REQUIREMENTS:

It shall be the CONTRACTOR's responsibility to notify the LFUCG Police Department's Safety Officer (859) 258-3600 prior to performing any work, which might interfere with traffic or compromise the public welfare or safety. The CONTRACTOR shall also be responsible for notifying the Division of Public Information and the Division of Traffic Engineering of any roadway blockages or traffic delays at least 48 hours in advance

Access to all existing subdivisions and private residences shall also be maintained unless otherwise directed.

1.09 CONTINUOUS OPERATIONS:

The existing system must be maintained in continuous operation in such a manner that it meets all local, state, and federal requirements. The CONTRACTOR is responsible not to deactivate or interfere with any system component required for continuous operation until a temporary system has been installed and is operational. The CONTRACTOR is responsible for payment of all fines resulting from any action or inaction on his part or the part of his subcontractors during performance of the Work that causes the facility/facilities to operate in an illegal manner or fail to operate in a legal manner.

1.10 COMPLIANCE WITH SAFETY REGULATIONS:

The equipment items furnished shall comply with all governing federal and state laws regarding safety, including all requirements of the Occupation and Safety Act of 1970 (OSHA).

It shall be the CONTRACTOR's responsibility to provide signs, traffic control devices, and obtain any required permits throughout the duration of this contract and is to be included in the cost of work to be done.

CONTRACTOR shall abide by local and state regulations governing utility construction work.

Traffic control shall be provided according to the Federal Highway Administration (FHWA) Manual on Uniform Traffic Control.

1.11 MAPPING DISCREPANCIES:

The CONTRACTOR shall be responsible for reporting discrepancies between the OWNER's GIS mapping data and field observations, when encountered. Discrepancies shall include: differences in the location of manholes (more than 10 feet), missing or new manholes, differences in sewer pipe configuration/connectivity, or differences in pipe diameter.

When a mapping discrepancy is observed, the CONTRACTOR shall complete a Mapping Discrepancy Form. A sample Mapping Discrepancy Form is provided in Section 4 of the Technical Specifications.

Mapping Discrepancy Forms shall be submitted to the OWNER within 48 hours of initial observation of the discrepancy.

1.12 IDENTIFICATION REQUIREMENTS

The CONTRACTOR shall be required to have workers and all equipment clearly identified.

- A. It shall be the CONTRACTOR's responsibility to provide identification (ID) cards for all employees. The ID cards must have a photo of the employee, the company name, emergency phone number and contract expiration date. The ID cards shall be exposed at all times.
- B. All company equipment and vehicles shall have the company name and an emergency number clearly displayed.

1.13 EMERGENCIES:

The CONTRACTOR shall provide the Engineer with an emergency telephone number where he or his coordinator may be reached on a 24 hour, daily basis.

1.14 COMMUNICATIONS:

The CONTRACTOR shall provide, for the duration of the contract, for the ENGINEER and/or the OWNER's representative(s) a means of direct communication acceptable to the ENGINEER. This may be in the form of a cell phone number, e-mail address or radio. The form of communication and pertinent information related to the cell phone number, e-mail address or radio must be provided to the ENGINEER and/or the OWNER prior to start of construction.

- A. The ENGINEER will provide the CONTRACTOR with an on call list for after regular work hours in case of an emergencies and \ or if assistance is needed from the Division of Water Quality on call personnel.
- B. The CONTRACTOR shall notify the Division of Water Quality on call personnel prior to work each day and shall notify the Division of Water Quality on call personnel at the end of work each work day.

1.15 FLOW CONTROL:

The CONTRACTOR shall furnish and install all sewer plugs, bypass piping and pumping equipment where necessary to adequately handle existing flow rates during performance of the work. Any overflow shall be reported to Kentucky Division of Water, Environmental Response Team (ERT) and the ENGINEER in accordance with the Sewage Spill Procedure outlined in Section 4.04 of the Technical Specifications.

In general, pumping equipment shall be positioned in or near the upstream end of the sewer section with piping laid to the next downstream manhole. Sewage shall only be bypassed to a downstream sanitary manhole or adjacent sanitary sewers. No overflow will be permitted.

Whenever flows in a sewer line are blocked or plugged, sufficient precautions shall be taken by the CONTRACTOR to protect the sewer lines from damage that might be inflicted by excessive sewer surcharging. Further, precautions shall be taken by the CONTRACTOR to ensure that sewer flow control operations do not cause flooding or damage to public or private property being served by the sewers involved. If such damage occurs, it shall be the CONTRACTOR's responsibility to clean, disinfect, and replace, where appropriate, any and all damaged public or private property as quickly as possible. The CONTRACTOR shall be available or make the necessary arrangements to perform work of this nature.

1.16 DAILY CLEAN UP:

At the end of each working day, the CONTRACTOR shall conduct a daily clean-up of trash, product containers, and misc. debris, at the individual work sites where he has performed or is performing the work, as directed by the ENGINEER.

1.17 FEDERAL, STATE, AND LOCAL LAWS:

It shall be the CONTRACTOR's responsibility to research, understand, and comply with all federal, state, and local laws, codes, regulations, ordinances, etc., which relate to performing the work as described within this contract.

1.18 LOCATION OF WORK SITES:

In general, the work sites contained in this contract are separated by moderate to large distances, but are all located within Fayette County.

It shall be the CONTRACTOR's responsibility to locate all work sites, including individual manholes. Manholes should be numbered in accordance with the numbering system used on the OWNER's GIS Sanitary Sewer Infrastructure Data.

The CONTRACTOR shall be responsible for verifying their location prior to installation of any monitoring equipment. Monitoring equipment installed in locations not prescribed

by the OWNER or ENGINEER will be at the CONTRACTOR's own expense and no compensation will be provided.

1.19 GEOGRAPHIC INFORMATION SYSTEM (GIS) DATA:

The OWNER will provide a copy of their GIS Sanitary Sewer Infrastructure Data to the CONTRACTOR, upon request. The CONTRACTOR will be required to sign a License Agreement prior to receiving the data. There is no cost associated with the License Agreement, but it does restrict use of the data. GIS data will not be provided without a signed License Agreement.

1.20 COORDINATION MEETINGS:

The CONTRACTOR's project coordinator shall be required to attend any scheduled meetings with the OWNER and ENGINEER. The ENGINEER will notify the CONTRACTOR of the location, date and time of meetings. The purpose of these meetings will be to facilitate effective communication between all parties, convey pertinent information, and to discuss the status of the project.

At each meeting, the CONTRACTOR shall be prepared to provide a summary of the project status, including monitoring equipment down-time or data loss statistics, inaccuracies, maintenance issues, and any other relevant project issues or challenges. The CONTRACTOR should also identify any anticipated slippages in the project schedule or other conditions/risks which may jeopardize the CONTRACTOR from completing the work within the allotted schedule.

1.21 SPILLS

The CONTRACTOR shall perform the work in a manner that does not cause flooding or damage to public or private property being served by the sewers involved. If such damage occurs as a result of the CONTRACTOR's actions, it shall be the CONTRACTOR's responsibility to clean, disinfect, and replace, where appropriate, any and all damaged public or private property as quickly as possible. The CONTRACTOR shall be available or make the necessary arrangements to perform work of this nature.

Any unpermitted sewage release from the sewer system shall be reported according to the Sewage Spill Procedures outlined in Section 4.04 of the Technical Specifications.

END OF SECTION

TECHNICAL SPECIFICATIONS

SECTION 2

FLOW MONITORING

2.01 GENERAL

Temporary flow monitoring is to be performed in the gravity sanitary sewer system. The intent of the flow monitoring is to collect dry weather and wet weather sewer flow rates, velocities, and depths at monitoring locations prescribed by the ENGINEER. Collected data will be utilized by the ENGINEER to support the OWNER's Capacity Assurance Program and hydraulic model maintenance. CONTRACTOR is to provide collected flow measurements. Determination of dry weather and wet weather flow parameters will be performed by others and is not part of the Scope of Work for this contract. Analysis of the flow data by the CONTRACTOR is limited to that necessary to verify accurate measurement and performance of the monitoring equipment.

2.02 SITE INVESTIGATIONS

The CONTRACTOR shall perform a site investigation at each monitoring location proposed by the ENGINEER. The site investigation shall include visiting each proposed location and verifying its suitability for installing monitoring equipment and collecting reliable and accurate flow measurements.

The CONTRACTOR shall notify (in writing) of the suitability of each proposed flow monitoring site. The CONTRACTOR shall clearly identify any proposed monitoring sites that are, in the opinion of the CONTRACTOR, ill-suited for performing flow measurement and provide a short description of the basis for the opinion. A digital photograph (or movie) should accompany the written communication for any proposed monitoring site that is not recommended by the CONTRACTOR. The photograph shall clearly illustrate the issue/concern with flow monitoring at the location.

2.03 EQUIPMENT

The CONTRACTOR's equipment shall be capable of monitoring sewer flow depths, velocities, and rates with an accuracy of plus or minus ten percent (+/- 10%) under both normal flow and surcharging conditions.

Monitoring equipment shall be capable of recording measurements at five (5) minute intervals on a continuous 24-hour basis over a continuous four (4) month monitoring

period, which shall generally begin near the first of March. The OWNER reserves the right to increase or decrease the length of the monitoring period at their discretion.

Several of the monitoring locations may be near the terminus of a pump station force main. At these locations, the flow monitoring equipment shall be capable of recording flow measurements at 1-minute intervals over the monitoring period.

Ownership of monitoring equipment remains with the Contractor and no equipment is to be provided to LFUCG as part of this contract.

2.04 INSTALLATION

The CONTRACTOR shall furnish all materials, equipment, and labor to install flow monitoring equipment. Flow monitoring equipment shall be installed in a manner to minimize disruption of the operation of the sewer.

2.05 CONFINED SPACE ENTRY

All crews entering sewer manholes shall be trained in and equipped for confined space entry and perform all such entries in accordance with federal, state, and local requirements, including those of the Occupational Safety and Health Administration (OSHA).

Proof of confined space entry training certification shall be provided to the OWNER, upon request, for any person performing the flow monitoring installations or equipment removals.

2.06 CALIBRATION

Flow monitoring equipment shall be calibrated prior to the start of the monitoring period to ensure that accurate measurements are being recorded by the meter. At a minimum, the flow depth in the sewer shall be verified manually and compared to the depth recorded by the meter.

Meter calibration checks shall be performed biweekly during the monitoring period. The CONTRACTOR shall provide data to verify calibration checks were performed during the monitoring period to ensure the maximum accuracy range of plus or minus ten percent (+/- 10%).

2.07 FLOW MONITORING LOCATIONS

Flow monitoring locations will be provided to the CONTRACTOR by the ENGINEER. The CONTRACTOR shall have equipment to perform flow monitoring in pipe sizes

ranging from 8 inches to 54 inches in diameter and in manholes up to a depth of 30 feet. Monitoring locations will be located within Fayette County, Kentucky.

2.08 EQUIPMENT MAINTENANCE AND DATA DOWNLOAD FREQUENCY

The CONTRACTOR is responsible for all maintenance of flow monitoring equipment necessary to ensure their continued operation, reliability, and accuracy. No compensation will be provided for replacement of inoperable, malfunctioning, damaged, or otherwise under-performing monitoring equipment.

Flow monitoring equipment shall be inspected, maintained and calibrated as necessary to maintain a system-wide uptime of ninety (90) percent. At a minimum, the CONTRACTOR shall inspect each flow meter and download collected data every 2 weeks unless telemetry is used.

The CONTRACTOR shall maintain a log that summarizes the date and time when maintenance is performed at each monitoring location. The maintenance log shall briefly summarize the maintenance activity performed and document any problems/issues that were encountered.

2.09 TRAFFIC CONTROL

The CONTRACTOR shall be responsible for the traffic control measures necessary to provide safe conditions for their personnel and the general public. Traffic control shall be in accordance with the requirements of the Lexington-Fayette Urban County Government (LFUCG), Division of Traffic Engineering. All work potentially impacting traffic shall be coordinated with the Division of Traffic Engineering and the Division of Water Quality prior to commencing the work.

Whenever the CONTRACTOR's operations create a condition hazardous to the public, the CONTRACTOR shall furnish traffic control persons (flagmen and guards) as are necessary to give adequate warning to the public and safely allow for the passage of pedestrians and vehicles through the affected area. All traffic control devices/signage shall be in accordance with the Manual of Uniform Traffic Control Devices published by the Federal Highway Administration.

The CONTRACTOR shall be responsible for obtaining all traffic control or encroachment permits (local, state, federal) necessary to perform the work. Costs associated with traffic control and permits shall be incidental to the work. All traffic control and permit costs shall be included in the unit costs provided in the Bid Schedule.

2.10 ACCESS

Where access to private property is necessary to perform the work, the CONTRACTOR shall be responsible for coordinating access with the affected property owner. Refer to Section 1.07 of the Section 1 (GENERAL SCOPE & SPECIAL PROVISIONS) of the Technical Specifications for additional requirements relative to work on private property.

Where access to a manhole on public property is prevented (obstruction on lid, paved over, etc.), the CONTRACTOR shall coordinate with the OWNER for resolution. For manholes with bolted lids, the CONTRACTOR shall temporarily remove the bolts to perform the work. Bolts shall be re-fastened before leaving the location for the day.

The CONTRACTOR shall make a reasonable effort to locate manholes identified for monitoring. Where a manhole is suspected to be buried, the CONTRACTOR shall notify the OWNER for resolution.

Manholes located less than six (6) inches below the surface (or in mulched areas) may be uncovered by the CONTRACTOR. When uncovered, the ground around the sides of the exposed manhole shall be laid back and all disturbed areas shall be seeded and protected with mulch or straw.

2.11 FIELD OBSERVATION NOTIFICATIONS

Where a missing manhole lid/grate, damage, or other condition that poses an imminent threat of failure or safety hazard is observed, the CONTRACTOR shall report it immediately to the OWNER.

Where an active sewage overflow, or evidence of a prior overflow, is observed, the CONTRACTOR shall report it immediately by contacting LexCall (859-425-2255 or 311).

If a manhole is observed to be surcharging during dry weather conditions, the CONTRACTOR shall notify the OWNER immediately.

In all notifications, the CONTRACTOR shall identify the property address, GIS asset identification number (if known), and briefly summarize the nature of the observation.

2.12 DATA QUALITY ASSURANCE/QUALITY CONTROL

The CONTRACTOR shall be responsible for performing internal quality assurance and quality control (QA/QC) reviews on collected data to ensure its accuracy. QA/QC review of the raw data provided to the ENGINEER each month is not required. QA/QC review of the final data provided at the conclusion of the monitoring period is required prior to

submission to the OWNER. (Refer to Section 2.14 of this Technical Specification for a detailed list of required Flow Monitoring deliverables.)

The CONTRACTOR shall provide documentation to verify QA/QC reviews were performed.

2.13 REMOVAL OF EQUIPMENT

The CONTRACTOR shall remove all flow monitoring equipment from the sewer system at the conclusion of the monitoring period. Removal costs shall be included in the unit price for Item No. 1 (Installation, Removal, & Calibration of Temporary Flow Meter) in the Bid Schedule.

All flow monitoring equipment shall be removed from the sewer system within two (2) weeks of the conclusion of the monitoring period. The CONTRACTOR shall notify the OWNER when all equipment has been removed from the sewer system.

2.14 DELIVERABLES

- A. **Raw Flow Data.** At a minimum, the CONTRACTOR shall furnish raw flow measurements (rate, velocity, and depth) for all monitoring locations to the ENGINEER on a monthly basis. Raw data shall be provided in a Microsoft Excel database or a text file that can be easily imported into Microsoft Excel. Raw flow data provided to the ENGINEER shall not be adjusted or corrected to “smooth” out data spikes. An example table of raw flow data is provided in Section 4.05 of the Technical Specifications.
- B. **Final Report.** The CONTRACTOR shall prepare a final report and data sets for the entire flow monitoring period. One (1) printed copy and an electronic copy (in Adobe Acrobat Portable Document Format) shall be provided to the OWNER and ENGINEER. The final report shall include the following:
- Description of each monitoring site (pipe identification number/name, location/address, installation date, pipe size, pipe material, manhole depth);
 - Photographs of each meter location and installation;
 - Description of equipment utilized (model and manufacturer)
 - Discussion of any unusual events during monitoring period or maintenance issues that adversely impacted flow measurement;
 - Summary table reporting actual meter uptime achieved at each monitoring location;
 - Installation and calibration notes;

- QA/QC documentation;
- Maintenance log records;
- Graphs showing flow, velocity, and depth for each meter;
- Depth versus velocity scatter plots for each monitoring location; and
- Rainfall monitoring period information (See Section 3.11 of the Technical Specifications).

C. **Final Flow Data**. The CONTRACTOR shall provide an electronic copy of the final flow data (after adjustment from QA/QC reviews). For each meter the data shall include the: meter identification number/name, location, date and time step (in 5 minute intervals), and corresponding measured flow rate, velocity, and depth. Final flow data shall be provided in a Microsoft Excel spreadsheet with a separate tab established for each monitoring site. The electronic copy of the flow data shall be provided on a flash drive and provided with the Final Report.

The Final Report and Final Flow Data shall be submitted to LFUCG within 45 days of the end of the monitoring period.

END OF SECTION

TECHNICAL SPECIFICATIONS

SECTION 3

RAINFALL MONITORING

3.01 GENERAL

Temporary rainfall monitoring is to be performed concurrently with the flow monitoring period to support future analysis of the flow data by the ENGINEER. Rain gages shall be placed on the rooftop at the following locations:

Table 1. Rainfall Gage Locations - 2023

No.	Sewershed	Site ID	Location Name	Address
1.	Cane Run	CR-RG01	Upper Cane Run Wet Weather Storage Facility	749 New Circle Rd.
2.	Cane Run	CR-RG02	Lex Tran Facility	200 W. Loudon Ave
3.	South Elkhorn	SE-RG01	Mint Hill Pump Station	1510 Man O War Blvd.
4.	West Hickman	WH-RG01	Mason Liquors	3500 Creekwood Dr.
5.	West Hickman	WH-RG02	Mill Creek Elementary School	1212 Reva Ridge Way
6.	North Elkhorn	NE-RG01	Thompson Pump Station	2209 Walnut Grove Lane
7.	Town Branch	TB-RG01	Cassidy School	1125 Tates Creek Road
8.	Town Branch	TB-RG02	Lexington Fire Dept. Station 13	1437 Leestown Road
9.	Wolf Run	WR-RG01	Wolf Run Wet Weather Storage Facility	1104 Kilrush Drive

3.02 SITE INVESTIGATIONS

The CONTRACTOR shall perform a site investigation at each rainfall monitoring location proposed by the ENGINEER. The site investigation shall include visiting each proposed location and verifying its suitability for installing monitoring equipment and collecting reliable and accurate rainfall measurements.

The CONTRACTOR shall notify (in writing) of the suitability of each proposed rainfall monitoring site. The CONTRACTOR shall clearly identify any proposed monitoring

sites that are, in the opinion of the CONTRACTOR, ill-suited for performing rainfall measurement and provide a short description of the basis for the opinion. A digital photograph should accompany the written communication for any proposed monitoring site that is not recommended by the CONTRACTOR. The photograph shall clearly illustrate the issue/concern with rainfall monitoring at the location.

3.03 EQUIPMENT

Rainfall monitoring equipment shall consist of a tipping bucket rain gage capable of recording rainfall amounts in 0.01 inch increments or smaller. Rainfall gage equipment shall be sufficiently weighted or anchored to prevent overturning from excessive wind or small animal (e.g. bird, squirrel, etc.) activity.

Rainfall monitoring equipment shall be capable of recording measurements at five (5) minute intervals on a continuous 24-hour basis over a continuous four (4) month monitoring period, which shall generally begin near the first of March. The OWNER reserves the right to increase or decrease the length of the monitoring period at their discretion.

Ownership of monitoring equipment remains with the Contractor and no equipment is to be provided to LFUCG as part of this contract.

3.04 INSTALLATION

The CONTRACTOR shall furnish all materials, equipment, and labor to install rainfall monitoring equipment. Equipment shall be installed in locations that avoid overhead obstructions or areas of excessive localized wind that would undermine the ability to accurately record rainfall amounts during wet weather events.

It is the CONTRACTOR's responsibility to secure equipment in a manner to prevent vandalism or theft. The OWNER will not be responsible for damaged or stolen equipment.

3.05 CALIBRATION

Rainfall monitoring equipment shall be calibrated prior to the start of the monitoring period to ensure that accurate measurements are being recorded by the gage.

Rainfall gage calibration checks shall be performed monthly during the monitoring period. The CONTRACTOR shall provide data to verify calibration checks were performed during the monitoring period to ensure the maximum accuracy range of plus or minus ten percent (+/- 10%).

3.06 RAINFALL MONITORING LOCATIONS

Rainfall monitoring locations will be provided to the CONTRACTOR by the ENGINEER. It is the OWNER's preference to select monitoring locations on property owned by LFUCG or other government entity. Preference will be given to building rooftops to minimize the potential for tampering, vandalism, or theft. Rainfall monitoring locations will be located within Fayette County, Kentucky.

3.07 EQUIPMENT MAINTENANCE AND DATA DOWNLOAD FREQUENCY

The CONTRACTOR is responsible for all maintenance of rainfall monitoring equipment necessary to ensure their continued operation, reliability, and accuracy. No compensation will be provided for replacement of inoperable, malfunctioning, damaged, or otherwise under-performing monitoring equipment.

Rainfall monitoring equipment shall be inspected, maintained and calibrated as necessary to maintain a system-wide uptime of ninety (90) percent. At a minimum, the CONTRACTOR shall inspect each rainfall gage and download collected data every 2 weeks unless telemetry is involved.

The CONTRACTOR shall maintain a log that summarizes the date and time when maintenance is performed at each monitoring location. The maintenance log shall briefly summarize the maintenance activity performed and document any problems/issues that were encountered.

3.08 ACCESS

The CONTRACTOR shall be responsible for coordinating access to install, maintain, and remove rainfall monitoring equipment.

Where access to private property is necessary to perform the work, the CONTRACTOR shall be responsible for coordinating access with the affected property owner. Refer to Section 1.07 of the Section 1 (GENERAL SCOPE & SPECIAL PROVISIONS) of the Technical Specifications for additional requirements relative to work on private property.

3.09 DATA QUALITY ASSURANCE/QUALITY CONTROL

The CONTRACTOR shall be responsible for performing internal quality assurance and quality control (QA/QC) reviews on collected data to ensure its accuracy. QA/QC review of the raw data provided to the ENGINEER each month is not required. QA/QC review of the final data provided at the conclusion of the monitoring period is required prior to submission to the OWNER. (Refer to Section 3.11 of this Technical Specification for a detailed list of required Rainfall Monitoring deliverables.)

The CONTRACTOR shall provide documentation to verify QA/QC reviews were performed.

3.10 REMOVAL OF EQUIPMENT

The CONTRACTOR shall remove all rainfall monitoring equipment from the sewer system at the conclusion of the monitoring period. Removal costs shall be included in the unit price for Item No. 3 (Installation, Removal, & Calibration of Temporary Rain Gage) in the Bid Schedule.

3.11 DELIVERABLES

- A. **Raw Rainfall Data.** At a minimum, the CONTRACTOR shall furnish raw rainfall measurements (date, time, and depth) for all monitoring locations to the ENGINEER on a monthly basis. Raw data shall be provided in a Microsoft Excel database or a text file that can be easily imported into Excel.
- B. **Final Report.** Rainfall monitoring information shall be included in the Final Report outlined in Section 2.14 in Section 2 (FLOW MONITORING) of the Technical Specifications. The final report shall include the following information relative to the rainfall monitoring:
- Description of each monitoring site (address, location within address, equipment type, and installation date);
 - Type of equipment used (model and manufacturer);
 - Discussion of any unusual events during monitoring period or maintenance issues that adversely impacted rainfall measurement;
 - Summary table reporting actual gage uptime achieved at each monitoring location;
 - Installation and calibration notes;
 - QA/QC documentation;
 - Maintenance log records;
 - Table summarizing each discrete rainfall event that occurred during the monitoring period. For each rainfall event identify the start date/time, end date/time, total precipitation depth, and the return period/recurrence interval; and
 - Graph showing rainfall depth versus time for each monitoring location.

- C. **Final Rainfall Data**. The CONTRACTOR shall provide an electronic copy of the final rainfall data (after adjustment from QA/QC reviews). For each rainfall gage the data shall include the: gage identification number/name, location, date and time step (in 5 minute intervals), and corresponding measured rainfall depth. Final rainfall data shall be provided in a Microsoft Excel spreadsheet with a separate tab established for each monitoring site. The electronic copy of the rainfall data shall be provided on a flash and provided with the Final Report.

The Final Report and Final Rainfall Data shall be submitted to LFUCG within 45 days of the end of the monitoring period.

TECHNICAL SPECIFICATIONS

SECTION 4

SAMPLE FORMS

4.01

MAPPING DISCREPANCY FORM

Date Observed: _____	Discrepancy Type: New Manhole(s): <input type="checkbox"/> Manhole(s) Does Not Exist: <input type="checkbox"/> Connectivity: <input type="checkbox"/> Other: <input type="checkbox"/>
Crew Leader: _____	
Sewershed: _____	
Address: _____	
Location Details: _____	Identified During: Smoke Testing: <input type="checkbox"/> Manhole Inspections: <input type="checkbox"/> CCTV Inspection: <input type="checkbox"/> Manhole Raising: <input type="checkbox"/> Other (specify): <input type="checkbox"/>
Affected Pipe Segment(s): 	
Affected Manhole(s): 	
Sketch: 	
Additional Comments: _____ _____ _____	
Resolution: _____	

Date: _____	CAPACITY ASSURANCE PROGRAM FLOW MONITORING FIELD SERVICES			Distributor: _____
Monitoring Location (Manhole ID)	Address	Resident Name and Phone # (if given)	Distribution Date	Comments

4.03 PRIVATE PROPERTY NOTICE

Dear Resident:

This is to let you know that the Lexington-Fayette Urban County Government will be performing maintenance activities on the sanitary sewer in your area. The sanitary sewer contractor _____ is performing the work.

We are attempting to reduce both the sanitary sewer overflows and operating cost at the treatment plant. These expenditures are paid from the Sanitary Sewer User's Fee.

In order to do this, we will need to access our sanitary sewer easement by way of your property on or about ____/____/____/.

If you are not the owner of this property, please forward this letter to the property owner.

If you have any questions, concerns or special problems, please call the sanitary sewer contractor at: _____, or LexCall (859) 425-2255 or 311.

SEWAGE SPILL PROCEDURE

The following list is a chronological checklist of things that need to be completed when experiencing a sewage overflow or spill. Understand that this checklist is intended only to provide **minimal** procedures for a general sanitary sewer overflow occurrence. Each overflow occurrence is situation-dependent and more steps may need to be added to ensure proper cleanup.

1. **Immediately** call Environmental Response Team (ERT), LexCall, and CAP Manager
 - **ERT** – 1-800-928-2380
 - **LexCall:** Sewer Line Maintenance – (859) 425-2255 or 311
 - **CAP Manager:** Chris Begley – (859) 425-2465 Office, (859) 797-3562 Cell
 - You will need to report the following regarding the incident:
 - Estimated spill volume (in gallons)
 - Time of the spill and duration
 - Location (street address)

ERT will assign an Incident Number that you will need to write down.

2. **Immediately** contain the overflow and prevent untreated sewage from entering waterways (i.e. creeks, rivers, lakes, etc.) by building a temporary barrier or containment using sandbags, soil, metal or wood curbing, etc.
3. Remove sanitary water from containment area. This can be done numerous ways. See below for examples of how to remove sanitary water:
 - Use vacuum truck to remove water from containment area
 - Using barrier, direct flow back into sanitary sewer manhole
4. Remove any visible debris (e.g. toilet paper, condoms, etc.) from area and dispose of at the wastewater treatment plant.
5. Use lime or some type of disinfectant in pervious areas such as soil, mulch, and grass or open areas.
6. Once sanitary water has been contained and removed, the impervious areas (pavement, concrete, etc.) should be rinsed. The water used to rinse the impervious area will also need to be removed by the previous methods described.
7. The Kentucky Department of Environmental Protection must be notified via email within 24 - 48 hours. Be sure to include the Incident Number. Electronic Submittal address is: <https://dep.gateway.kygov/eportal/default.aspx>.

A copy of the Electronic Submittal should also be faxed to the Division of Fish and Wildlife at (502) 564-3178.

An “after the event” summary should be electronically provided to LFUCG’s Division Director, Charles Martin (chmartin@lexingtonky.gov).

EXAMPLE RAW FLOW DATA TABLE

Meter ID	Location	Date/Time Stamp	Flow (gpm)	Depth (inches)	Velocity (fps)
CR1_20	123 Newtown Pike	1/16/2009 0:00	79.27	15.01	1.23
CR1_20	123 Newtown Pike	1/16/2009 0:05	81.71	15.21	1.29
CR1_20	123 Newtown Pike	1/16/2009 0:10	84.11	15.36	1.25
CR1_20	123 Newtown Pike	1/16/2009 0:15	88.32	15.98	1.34
CR1_20	123 Newtown Pike	1/16/2009 0:20	85.66	15.46	1.32
CR1_20	123 Newtown Pike	1/16/2009 0:25	86.72	15.72	1.33
CR1_20	123 Newtown Pike	1/16/2009 0:30	81.74	15.22	1.29
CR1_20	123 Newtown Pike	1/16/2009 0:35	82.67	15.28	1.28

2023 TEMPORARY FLOW MONITORING LOCATIONS

Preliminary flow meter sites for the 2023 monitoring season are summarized in Table 1. A corresponding map illustrating the preliminary monitoring locations is presented in Figure 1. The monitoring locations shown in Table 1 and in Figure 1 are provided for information purposes. Actual 2023 monitoring locations may change.

Table 1. Preliminary Temporary Flow Monitoring Locations - 2023

No.	Address / Location	Manhole ID	Pipe ID	Pipe Size (inches)
Cane Run Sewershed				
1.	775 N. Upper Street	CR3_70	CR3_71_CR3_70	12
2.	1065 Russell Cave Road	CR3_9	CR3_10_CR3_9	15
3.	740 New Circle Road (Lexmark)	CR1_129	CR2_367_CR1_129	18
4.	740 New Circle Road (Lexmark)	CR1_111	CR1_51_CR1_111	18
5.	531 New Circle Road	CR1_21B	CR1_22_CR1_21B	21
6.	920 Bull Lea Road	CR7_14A	CR7_15A_CR7_14A	30
South Elkhorn Sewershed				
7.	2276 Stone Garden Lane	SE1_151	SE1_153_SE1_151	8
8.	1300 Glenview Drive	SE5_1064	SE5_1064_SE5_789	10
9.	4196 Weber Way	SE5_1074	SE5_790_SE5_1074	10
North Elkhorn Sewershed				
10.	3145 Cornelius Trace	NE5_975	NE5_1_NE5_975	18
Town Branch Sewershed				
11.	726 Whitney Ave	TB1_312	TB1_313A_TB1_312	10
12.	1115 Slashes Road	TB5_398	TB5_394_TB5_398	8
13.	251 Irvine Road	TB5_315	TB5_316_TB5_315	12
14.	345 Desha Road	TB5_351	TB5_350_TB5_351	15
15.	923 Waverly Drive	TB1_393	TB1_489_TB1_393	8
16.	903 Waverly Drive	TB1_391	TB1_390_TB1_391	21
17.	316 Rose Lane	TB5_40	TB5_41_TB5_40	15
18.	428 Marquis Avenue	TB5_1048	TB5_1047_TB5_1048	12
West Hickman Sewershed				
19.	3474 Pimlico Parkway	WH3_607	WH3_606_WH3_607	12
20.	2044 Shadybrook Lane	WH6_107	WH6_108_WH6_107	15
21.	1761 Eastwood Drive	WH6_157A	WH6_158_WH6_157A	15

No.	Address / Location	Manhole ID	Pipe ID	Pipe Size (inches)
22.	2309 The Woods Lane	WH6_102A	WH6_645_WH6_102A	10
23.	3520 Creekwood Drive	WH6_75	WH6_98_WH6_75	24
24.	2046 Edgewater Court	WH6_105	WH6_105B_WH6_105	24
25.	1156 Appian Way Crossing	WH2_395A	WH2_395C_WH2_395A	24
26.	3562 Crosby Drive	WH2_437A	WH2_473_WH2_437A	18
Wolf Run Sewershed				
27.	233 Creekside Court	WR1_91	WR1_92_WR1_91	12
28.	1111 Kilrush Drive (vacant parcel)	WR1_699	WR1_695_WR1_699	42
29.	751 Enterprise Drive	WR1_2	WR1_3_WR1_2	30
30.	2104 Deauville Drive	WR1_99	WR1_140A_WR1_99	12
31.	2104 Deauville Drive	WR1_100	WR1_139_WR1_100	24
Unassigned				
32.	TBD ¹	TBD ¹	TBD ¹	TBD ¹
33.	TBD ¹	TBD ¹	TBD ¹	TBD ¹
34.	TBD ¹	TBD ¹	TBD ¹	TBD ¹
35.	TBD ¹	TBD ¹	TBD ¹	TBD ¹
36.	TBD ¹	TBD ¹	TBD ¹	TBD ¹

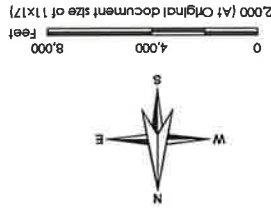
¹ The proposed location within LFUCG's sewer system for this flow meter has not yet been determined.

4.07 MAP OF 2023 TEMPORARY RAINFALL AND FLOW MONITORING LOCATIONS

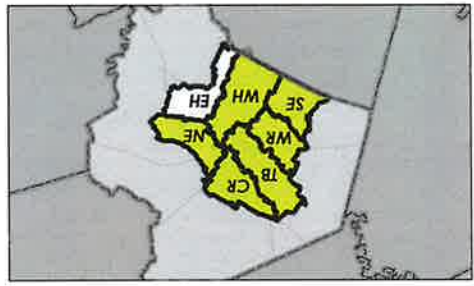


Legend

- 2023 Flow Meter Location
- 2023 Rain Gage Location
- Sewershed Boundary
- Pump Station
- Wastewater Treatment Plant
- Trunk Sewer
- Force Main
- Water Body
- Stream
- Public Park

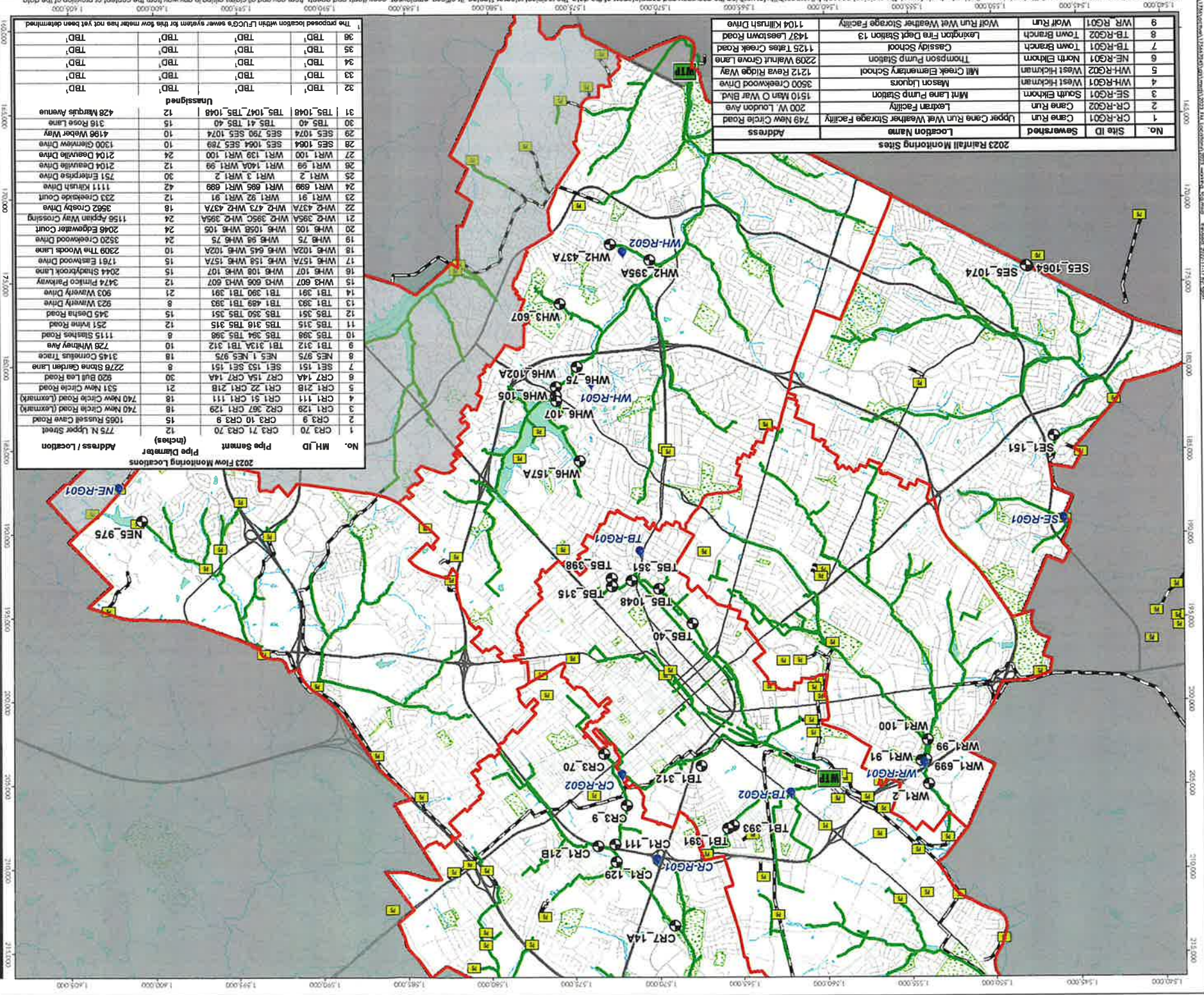


Notes
 1. Coordinate System: NAD 1983 StatePlane Kentucky North FIPS 1601 Feet
 2. Base features and aerial imagery (2020) provided by Lexington-Fayette Urban County Government; Geographic Information Systems in December 2020.



Project Location:
 Prepared by TCG on 2022-11-17
 Technical Review By AMG on 2022-11-17
 Independent Review By JH on 2022-11-17
 Lexington-Fayette Co., KY
 84.504 deg. W; 38.027 deg. N

Client/Project:
 LFUCG Division of Water Quality
 Capacity Assurance Program
 Annual Temporary Flow Monitoring Program
 Figure No. 1
 Title: 2023 Rainfall and Flow Monitoring Locations



THIS CONTRACT, made and entered into this the 1st day of August, 2022 by and between the **BOARD OF EDUCATION OF FAYETTE COUNTY, KENTUCKY**, of 450 Park Place, Lexington, Kentucky 40511, a political subdivision of the Commonwealth of Kentucky, (hereinafter referred to as Board), and **Lexington-Fayette Urban County Government, an urban county government created pursuant to KRS Chapter 67A through its Division of Family Services and The Family Care Center, whose principal address is 1135 Harry Sykes Way, Lexington, Kentucky 40504**, (hereinafter referred to as Family Care Center).

WITNESSETH:

WHEREAS, the Board is legally required, effective at the beginning of the 2022-2023 school year, to make available free appropriate preschool education and related services to all eligible children with and without disabilities (Kentucky Education Reform Act [KERA] Preschool Education Program, KRS 157.3175).

WHEREAS, the Family Care Center, a provider of preschool services, desires to provide services that will fully comply with the requirements enforceable against the Board;

NOW, THEREFORE, for and in consideration of the foregoing premises, the parties agree as follows:

1. The Family Care Center will comply with all federal and state laws and regulations required to provide a free appropriate education to all eligible children with and without disabilities assigned to the Family Care Center by the Board and accepted by the Family Care Center. Moreover, all preschool services and staff requirements of the Kentucky Education Reform Act will be met by the Family Care Center.

2. Child evaluation, special education, and related services will be made available as follows: Evaluations shall be started no later than September 22, 2022. Evaluation data shall be used along with other information by the Admissions and Release Committee (ARC) for development of the Individualized Education Program (IEP) developed for each child. Special education and related services to be provided to each disabled child shall commence at level, frequency, and initiation date as determined by the IEP.

At the Board's request, the Family Care Center will provide representation to the Board's ARC meeting at which the IEP is developed that identifies the Preschool as the program in which the child will be placed. By the end of the 2022-2023 school year, the Board will schedule this and any other meetings to review or revise the IEP at times that are mutually agreeable for the parent and the Family Care Center. The Board shall ensure that the parents, the Family Care Center, and the Board are involved in any decision about the child's IEP and agree to any proposed changes in the IEP before those changes are implemented. In addition, the Family Care Center will hold periodic parent conferences to which the Board is welcome to send a representative.

The Family Care Center will comply with all requirements of any assigned child's IEP, including related services. FCPS will provide all needed related services.

Transportation shall be provided only when a student lives on an established transportation route and the Family Care Center is within the boundaries of the same route. In addition, transportation will be provided only on days in which FCPS is open and in session. Transportation delivery and pick up will be during regularly scheduled route times. When transportation is required as part of the IEP, the ARC committee may consult with the FCPS

Preschool Coordinator, Preschool Program Specialist, and Transportation. FCPS, in order to comply with KERA regulations, has responsibility to offer an appropriate placement for eligible children.

The Family Care Center will implement the IEP, and will be responsible for compliance with PL 94-142, as amended by PL 99-457, as amended by PL105-17.

3. The Family Care Center will meet or exceed and maintain the standards identified as critical to a strong preschool program. Compliance with this requirement may be established by a satisfactory score, as determined by the Board, on the Early Childhood Education Rating Scale (ECERS) or its equivalent.

4. The Family Care Center will provide class size and adult/child ratios in compliance with the suggested KERA regulations, which are attached hereto and made a part hereof.

5. The Family Care Center, in cooperation with Child Find, shall notify the Board of children who may, according to local standards, be identified as at-risk or disabled. Costs of evaluations to determine the special needs of the child will be covered by the Board.

6. Services provided under this Contract shall be at no cost to the parent. Billing the parent's insurance or accessing other third party funding available for services to the child shall not be seen as a cost to the parent so long as the parent does not incur any out-of-pocket expense.

7. The Family Care Center will submit child count data on required forms to the Board for the KERA December 1, 2022, enrollment count of eligible children and other related data as may be required for purposes of reporting information required under KERA or under PL 94-142, as amended by PL 99-457, as amended by PL105-17.

The Family Care Center assures that children counted are either three (3) or four (4) years of age or who become five (5) years of age after August 1 of the school year (KERA, Section 17).

8. The Family Care Center will work with FCPS in hiring, training, and monitoring all staff required to perform the services covered under this Contract. All persons employed under this Contract shall be subject to the Interim Early Childhood Personnel Policy, and state and federal laws, including but not limited to: criminal record checks pursuant to KRS 160.380, Age Discrimination in Employment Act, Rehabilitation Act, 42 U.S.C. 1983, Title VII, 42 U.S.C. 2000 (e), et seq. All lead teachers and therapeutic staff shall hold credentials to be classified as Level I according to the Kentucky Department of Education Interim Personnel Guidelines (704 KAR 25:010). Lead teachers will direct instruction for the time specified as per the child's IEP.

9. The Family Care Center shall maintain all required data specified by KERA and PL 94-142, as amended PL 99-457, as amended by PL105-17, including enrollment verification data, annual program evaluation data, and such financial reporting as necessary to document audit trails for the funds expended under this Contract. The Family Care Center will assist the Board in preparing required reports and information to be submitted to the Kentucky Department of Education within the time frame established by the Board. This includes child identification data (including evaluation data) and ARC information and submit to the Board prior to the ARC meeting.

10. The records maintained by the Family Care Center on all children served through this Contract shall be fully available to the Board without parental consent. The Family Care Center will make the parents aware of this matter. All child records shall be governed by the Family Education Rights and Privacy Act (FERPA) and other applicable federal and state requirements.

11. The Family Care Center shall provide the Board the name of the person responsible for all communications and follow-up required by or resulting from the implementation of this Contract.

12. The Family Care Center will agree to submit to the FCPS contractor process, including, but not limited to, background checks.

13. The FCPS Coordinator of the Preschool Program shall be the contact person for the Board, who shall be responsible for all communications and follow-up required by or resulting from the implementation of this Contract. This person shall:

a. Monitor the services provided by the Family Care Center to assure compliance with all federal, state, and local laws and regulations pertaining to the education of eligible preschool children;

b. Serve as liaison on matters concerning program implementation, services to children with disabling conditions, including ARC participation, and planning for transition.

c. Serve as liaison to the Family Care Center to address mutual concerns.

14. The Board will solicit from the Family Care Center such child data on such forms as may be required for purposes of counting children for funding under KERA and PL 94-142, as amended by PL 99-457, as amended by PL105-17. The Board will submit to the Kentucky Department of Education such data and forms as may be required for implementation of programs under these state and federal requirements. The Board shall supply the Family Care Center with such information and data necessary for implementation of the requirements of this Contract. The Board shall invite the Family Care Center to send a representative to state and local meetings when information or training is made available that impact this Contract.

15. The program provided by the Family Care Center will operate a minimum of two and one-half (2 1/2) hours for instruction. Direct child instruction shall be made available 5 days per week. The Family Care Center shall provide services as required by this Contract in conformance to the calendar, including snow days, and non-traditional learning (virtual), followed by the Fayette County school system. Family Care Center will notify the Board of any federal or state holidays that will impact the closing of Family Care Center. For children who are at-risk, at least two (2) home visits will be made, the first of which will occur no more than sixty (60) days after the child is enrolled in the Family Care Center. For children who have a disability, the Family Care Center shall report to the parent the progress of the child at least twice yearly or as specified by the child's IEP.

Children will be educated in an environment that integrates children who are not disabled or at-risk, children who are at-risk, and children who are disabled, unless otherwise noted within the child's IEP and agreed to by the parent(s).

16. The Family Care Center shall notify the Board in writing of any child, affected by this Contract, who has an attendance record below 75% within any school month (20 days), unless there is a valid excused absence, (e.g. surgery, chicken pox) on file with the Family Care Center. Written notification shall be made in a timely manner.

17. The Family Care Center will provide space, including utilities, for all children participating in the KERA preschool program. All facilities will comply with the Cabinet for Human Resources Day Care requirements unless approved under Kentucky Department of Education

Preschool Administrative Regulations. The location of the facility for this program will be 1135 Harry Sykes Way, Lexington, Kentucky, (859) 288-4040. Each classroom will be furnished with developmentally appropriate materials, furniture, and equipment. A playground approved by day care licensing will be available to the program.

18. A variety of curricular resources will be utilized to implement the requirements specified in the IEP and under KERA as a foundation for the child's successful transition to and participation in kindergarten or first grade, whichever is the point of transition to school district services for the child. As available, the Family Care Center will use the curriculum developed or adopted by the Board, making adaptations as may be required to meet the individual needs of children.

19. This Contract may be amended from time to time as mutually agreed upon by the parties, but no such agreement shall become effective unless in writing and signed by both parties.

20. The term of this Contract shall be for one (1) fiscal year from the date of execution through June 30, 2023. The Family Care Center shall not be required to provide any services after the close of the school year, as determined by the calendar followed by the Fayette County school system, to children placed with the Family Care Center.

21. In the event that either party is unable to perform any of its obligations under this Contract or to enjoy any of its benefits because of natural disaster, actions or decrees of governmental bodies other than the Board, communication line failure or other causes not the fault of the affected party (hereafter referred to as an "Unpreventable Event"), the party who has been affected shall immediately give notice to the other party and shall do everything possible to resume performance. Upon receipt of such notice, this Contract shall be immediately suspended. If the period of nonperformance exceeds thirty (30) days from the receipt of notice of the Unpreventable Event, the party whose ability to perform has not been so affected shall have the right, by giving written notice, to terminate this Contract.

22. If the grant under which this Contract is made is terminated, the Board shall thereupon have the right to terminate this Contract by giving written notice to the Family Care Center of such termination and specifying the effective date thereof, which shall be at least thirty (30) days after the giving of notice by the Board. If the Family Care Center is unable or unwilling to comply with such additional conditions as may be lawfully imposed in the funding or contract under which the Board is performing the program to which these contracted services are being rendered, the Family Care Center shall have the right to terminate this Contract by giving written notice to the Board, signifying the effective date thereof, which shall be at least thirty (30) days after the giving of notice by the Family Care Center.

23. In the event of termination, all property, documents, and reports purchased or prepared by the Family Care Center under this Contract shall, at the option of the Board, become its property. Notwithstanding the above, the Family Care Center shall not be relieved of liability to the Board for any damages sustained by the Board by virtue of any breach of the Contract by the Family Care Center, and the Board may withhold any reimbursement to the Family Care Center for the purpose of set-off until the exact amount of damages due the Board from the Family Care Center is agreed upon or otherwise determined.

24. The Board may, from time to time, request changes in the scope or the services of the Family Care Center to be performed herein.

25. All remedies available to either party for breach of this Contract are cumulative and may be exercised concurrently or separately. The exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of any other remedy. In event of conflict or breach of contract, the party alleging conflict or breach shall provide written notice to the other party of the specific nature of the alleged conflict or breach. Remedies available herein should be exercised whenever possible. If additional remedies are necessary and such remedies incur additional cost, such cost shall be the responsibility of the party alleging conflict or breach of contract.

26. The Family Care Center will not discriminate against any employee in the performance of this Contract, or against any applicant for employment in the performance of this Contract because of race, creed, color, religion, marital status, age, political affiliation, national origin, or disabling condition. The Family Care Center will ensure that applicants are employed and that employees are treated during employment without regard to their race, creed, color, religion, marital status, age, political affiliation, national origin, or disabling condition. This requirement shall apply, 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 compensation; and selection for training, including apprenticeship.

27. No person in the United States shall, on the ground of race, creed, color, or national origin, be excluded from participation in, be denied the proceeds of, or be subject to discrimination in the performance of this Contract. The Family Care Center will comply with the regulations promulgated by the President, pursuant to the Civil Rights Act of 1964.

28. None of the funds, materials, property or services contributed by the Board or the Family Care Center under this Contract shall be used in the performance of this Contract for any partisan political activity, or to further the election or defeat of any candidate for public office.

29. No part of the program's curriculum may be religious in nature. There shall be no religious worship, instruction, or proselytization as part of or in connection with the performance of this Contract. The program is separately incorporated from any religious institution and maintains a non-sectarian board of directors.

30. The program provided under this Contract shall be provided in a drug-free work place.

31. The Family Care Center shall make financial, program progress, and other reports relating to matters within the scope of this Contract and upon such time tables as are reasonably requested by the Board.

32. To the extent permitted by law, the Family Care Center will indemnify, defend, protect, and save harmless the Board, its officers, agents, and employees, from and against any claims, damages, liabilities, losses, and expenses (including court costs and attorneys' fees) for all injury, including damages to any property due to any negligent or willful act or omission of the Family Care Center, arising out of or during the Family Care Center's services under this Contract. Provided, however, each party shall promptly notify the other party of any claim that may give rise to the Family Care Center's obligations under this paragraph, and provided that the Board, should the Family Care Center refuse legal representation regarding the claim, shall have the rights to hire an attorney of its choice to defend against or compromise any claim for which the Family Care Center may be ultimately responsible. Nothing contained herein is intended to act as, nor shall it be, a waiver of any defense, including that of sovereign immunity, that either party may have as to any third party.

33. If any section, paragraph, or clause of this Contract shall be held invalid by any court of competent jurisdiction, the invalidity of said section, paragraph, or clause shall not affect any other remaining provisions herein.

34. This Contract is deemed to be made under and shall be governed by and construed according to the laws of the Commonwealth of Kentucky.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the day and year first above written.

FAYETTE COUNTY PUBLIC SCHOOLS

Mechoa C. Williams
Mechoa Williams, Assistant Superintendent of Academic Services

11-16-22 Date *sd*

BY: *Whitney Lester*

Title: Director of Early Childhood

Date: 11/8/22

**Lexington-Fayette Urban County Government
Div. of Family Services-Family Care Center**

BY: *Linda Gorton*

Ms. Linda Gorton, Mayor

DATE: 2/1/2023

Andy Beshear
Governor



Jamie Link
Secretary, Education and
Labor Cabinet

Jason E. Glass, Ed.D.
Commissioner of Education and Chief Learner

KENTUCKY DEPARTMENT OF EDUCATION
300 Sower Boulevard • Frankfort, Kentucky 40601
Phone: (502) 564-3141 • www.education.ky.gov

October 6, 2022

Irma Bennett, Director
1135 Harry Sykes Way
Lexington, KY 40504

RE: 2022-23 Contractor Application
Status: Approved

Dear Mrs. Bennett:

The Office of Special Education and Early Learning (OSEEL) has approved the Family Care Center request to contract with the Fayette County School District during the 2022-23 school year. As described in the guidelines for contracting, approval is contingent upon maintaining a valid day care license and having received at least three stars in the Kentucky All STARS system during the 2021-2022 school year.

Family Care Center is granted approval as a contractor for one school year. A new application must be submitted annually. For additional information, contact Brittany Sams at brittany.sams@education.ky.gov or 502-564-4970 ext. 4522.

Sincerely,

Andrea S Bartholomew

Andrea Bartholomew, Manager
School Readiness Branch, OSEEL

cc: Dr. Demetrus Liggins, Superintendent, Fayette County School District
Dr. Whitney Stevenson, Preschool Coordinator, Fayette County School District
Dr. Thomas Williams, Early Learning Administrator, OSEEL
Brittany Sams, Consultant, School Readiness Branch, OSEEL
Dr. Sonia Michael, Berea Regional Training Center Director



Commonwealth of Kentucky

CONTRACT

DOC ID NUMBER:			
SC	095	2300000859	Version: 1
			Record Date: 12/15/2022

Document Description:	2022 EMA Program Funds (EMPG 2022 Cycle)
Cited Authority:	KRS39A.030 Grant activity-Div of Emergency Mgmt
Reason for Modification:	

Issuer Contact:	
Name:	Karen Stockton
Phone:	502-607-1106
E-mail:	KAREN.S.STOCKTON3.NFG@army.mil

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

Effective From: 10/01/2022 **Effective To:** 09/30/2024

Line Item	Delivery Date	Quantity	Unit	Description	Unit Price	Contract Amount	Total Price
1		0.00000		2022 EMA Program Funds	\$0.000000	\$2,763,389.50	\$2,763,389.50

Extended Description:

1. FAIN # EMA-2022-EP-00011 2. Federal Award Date - September 29, 2022 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 2022 MPG 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) \$5,526,779.00 (Federal Share)Federal Award Period: October 1, 2022, through September 30, 2024

Shipping Information:	Billing Information:
DMA - Division of Emergency Management 100 Minuteman Pkwy Bldg 110 Frankfort KY 40601	DMA - Division of Emergency Management 100 Minuteman Pkwy Bldg 110 Frankfort KY 40601

TOTAL CONTRACT AMOUNT:	\$2,763,389.50
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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, 2022, through September 30, 2024.

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, 2022 Federal Emergency Management Agency (FEMA) EMPG Funding Opportunity Announcement, and the FEMA Preparedness Grants Manual, February 2021.

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

The second party shall submit twelve operational claims or until second party allocation is met during the period of performance of October 1, 2022 through September 30, 2024. Operational claims include regular allocation expenditures to include but not limited to salary, mileage, utilities, etc.

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Operational Claim #1- October 2022
Operational Claim #2- November 2022
Operational Claim #3-December 2022
Operational Claim #4- January 2023
Operational Claim #5- February 2023
Operational Claim #6- March 2023
Operational Claim #7-April 2023
Operational Claim #8-May 2023
Operational Claim #9-June 2023
Operational Claim #10-July 2023
Operational Claim #11-August 2023
Operational Claim #12-September 2023

The Second Party may submit additional claims if allocation has not been met after the submission of all operational claims. The remaining allocation shall be encumbered from October 1, 2023, through March 31, 2024. Allocations not encumbered by March 31, 2024 shall be reallocated for Additional Allocation Funding requests. The Additional Allocation funding request period shall be April 1, 2024, through September 30, 2024.

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

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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 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, 2022, through September 30, 2024.
- (g) Additional allocations for projects shall begin on October 1, 2022, and conclude on September 30, 2024.

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- (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.
- (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:

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The Total contract amount is \$2,763,389.50, 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.
 - 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

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- 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

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

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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:**
 - 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**

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- 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;
 - 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;

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- 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.
 - 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:

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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
 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.

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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.

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.

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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.

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.

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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.
- (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.

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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:

Linda Gorton

Signature

Mayor

Title

Linda Gorton

Printed Name

2/13/2023

Date

Other Party:

Signature

Title

Printed Name

Date

Approved as to form and legality:

Attorney

MEMORANDUM OF AGREEMENT

THIS MEMORANDUM OF AGREEMENT ("Agreement"), is made and entered into on the 10th day of February, 2023, by and between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government of the COMMONWEALTH OF KENTUCKY created pursuant to KRS Chapter 67A ("LFUCG"), 200 East Main Street, Lexington, Kentucky 40507, and the **UNIVERSITY OF KENTUCKY** ("Organization") on behalf of **THE ARBORETUM, STATE BOTANICAL GARDEN OF KENTUCKY**, located at 500 Alumni Drive, Lexington, Ky. 40503 ("The Arboretum").

WITNESSETH

WHEREAS, The Arboretum provides an arena for outstanding activities for the citizens of Fayette County; and

WHEREAS, The Arboretum enhances the environment of Lexington; and

WHEREAS, Organization seeks to expand the Dorotha Smith Oatts Visitor Center located at The Arboretum, in conformity with the proposal submitted to the General Government and Social Services Committee of the Urban County Council on March 8, 2022 ("Project"), in order to expand The Arboretum's program offerings for citizens of Fayette County;

WHEREAS, between 2014 and 2021, LFUCG previous allocated a total of Seventy-Two Thousand Dollars (**\$72,000.00**) for the Project;

WHEREAS, Organization has demonstrated a need for additional funds to complete this Project;

WHEREAS, LFUCG finds that the expansion of the visitor center fulfills a public purpose and therefore desires to provide additional funding to support the Project;

NOW, THEREFORE, in consideration of the mutual promises and covenants set forth herein, the receipt and sufficiency of which are acknowledged, the parties hereby agree that LFUCG shall grant Organization the additional sum of **Five Hundred Thousand Dollars (\$500,000.00)**, within thirty (30) days of the effective date of this Agreement, bringing LFUCG's total allocation for this Project to Five Hundred Seventy-Two Thousand Dollars (\$572,000.00) ("**Funds**"), and in exchange for LFUCG providing these Funds, the Organization agrees that: (a) all Funds shall be used toward completion of the Project and for no other purpose; (b) that the Organization shall take steps to ensure that the Project is complete on or before **December 31, 2027**, and that in the event the Organization fails to complete the Project on or before this date, LFUCG shall have the right to seek repayment of all of the Funds it has disbursed through any means

available at law, in equity, or in bankruptcy; (c) that LFUCG will not be responsible for the maintenance or care of the Project; (d) that Organization shall provide to LFUCG, upon request, sufficient documentation of the appropriate expenditure of the Funds; (e) that the Organization shall comply with all applicable procurement laws and regulations in completion of the Project; (f) that Organization shall provide equal opportunity in employment for all qualified persons; prohibit discrimination in employment because of race, color, creed, national origin, sex or age between 40 and 70; promote equal opportunity through a positive, continuing program of equal employment and cause each of its subcontracting agencies to do so, with the understanding that this program of equal employment opportunity shall apply to every aspect of its employment policies and practices; (g) that Organization shall keep and make available to LFUCG any records related to this Agreement as are necessary to support its performance with the terms of this Agreement, and shall allow LFUCG any necessary access to its records or to the Project site in order to monitor the Organization's performance under this Agreement; and (h) in any written or oral communications, the Organization shall identify LFUCG as the source of the above-referenced funds, and shall not specifically identify any individual Councilmember(s) as being responsible for the funds donated by LFUCG.

2. Neither party may assign its rights or duties under this Agreement without the prior written consent of the other party.

3. Each party shall be responsible for any claims or damages that are based upon its respective performance of this Agreement, or that are based upon the actions or inactions of its respective employees or agents.

4. This Agreement shall remain in effect until the Project is complete and open for use by the general public.

5. In no event shall the parties be construed, held, or become in any way for any purpose the employee of the other party, or partners, associates or joint ventures in the conduct of their respective endeavors or otherwise.

6. This Agreement shall constitute the entire agreement between the parties and no representations, inducements, promises or agreements, oral or otherwise, which are not embodied herein, shall be effective for any purpose.

7. By mutual agreement, the parties to this Agreement may, from time to time, make written changes to any provision hereof. Organization acknowledges that LFUCG may make such changes only upon approval of its legislative authority, the Lexington-Fayette Urban County Council, and the signature of its Mayor.

SIGNATURE PAGE TO FOLLOW

IN WITNESS WHEREOF, the parties have executed this Agreement at Lexington, Kentucky, the day and year first above written.

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT

BY: Linda Gorton
LINDA GORTON, MAYOR

ATTEST:
Markemrie Jack
Clerk of the Urban County Council

Deputy

THE UNIVERSITY OF KENTUCKY

BY: Nancy M. Cox by esc.
NANCY M. COX,
DEAN OF THE COLLEGE OF AGRICULTURE,
FOOD AND ENVIRONMENT

AND
BY: [Signature]
DR. ERIC MONDAY,
EXECUTIVE VICE PRESIDENT FOR FINANCE
AND ADMINISTRATION

COMMONWEALTH OF KENTUCKY)
)
COUNTY OF FAYETTE)

The foregoing instrument was acknowledged before me this the 12th day of January, 2023 by Nancy Cox, _____
Dean of the College of Agriculture, Food and Environment, on behalf of the University of Kentucky.

My commission expires: January 14th, 2026
Glendy Meyer
Notary Public, State-at-Large, Kentucky KYNP22364

COMMONWEALTH OF KENTUCKY)
)
COUNTY OF FAYETTE)

The foregoing instrument was acknowledged before me this the 17th day of January, 2022, by Dr. Eric Monday, _____ Executive Vice President for Finance and Administration, on behalf of the University of Kentucky.

My commission expires: 05.13.2023
Linda J. Speakman 622443

Notary Public, State-at-Large, Kentucky



CONTRACT

THIS AGREEMENT; made by and between **Seagrave Fire Apparatus, LLC** of Clintonville, Wisconsin, hereinafter referred to as the "Seller", and **Lexington-Fayette Urban County Government, Lexington, KY**, by its authorized representative, hereinafter referred to as the "Purchaser".

1. The Seller hereby agrees to furnish **one (1) unit of Seagrave model DP05CT Capitol 100 ft 500 lb Force non-quit rear-mount aerial**, hereinafter referred to as "Apparatus and Equipment", according to the mutually agreed specifications and change order documents hereto attached and made a part of this contract, and to deliver the same as hereinafter provided.
2. The Seller guarantees that all material and workmanship in and about the Apparatus and Equipment shall comply with the mutually agreed specifications and change orders. In the event there is any conflict between the City Bid Specifications and the Seagrave Bid Proposal, the mutually agreed specifications and change orders will prevail. The standard Seagrave Limited Warranty will apply as provided for in the mutually agreed specifications and change orders. Minor details of materials and construction, not otherwise specified, shall be left to the decision of the Seller who shall be solely responsible for the design, engineering and construction of all features of the Apparatus and Equipment. Any changes to the contract or purchase order must be approved in advance through the issuance of a written change order by the Seller. The Seller will not assume responsibility for performing any change requested but not approved by the Purchaser within five (5) days of the change order submission for approval.
3. **The Apparatus and Equipment shall be ready for delivery from Clintonville, Wisconsin, within 790 calendar days after the receipt of the (i) mutually agreed specifications, (ii) change order documents and (iii) approval drawing signed by the authorized representative of the Purchaser. Any resulting change orders will result in an adjusted delivery days as determined by Seagrave. Liquidated damages in the amount of \$500 per day shall go into effect on the 791st day or such amended delivery date provided, however, the order is completely defined. The mutually agreed specifications and change order documents and approval drawing shall be delivered to the Purchaser for their signature in not more than 31 days from contract receipt at Seagrave or not more than five days from pre-construction meeting, if so provided. Delays due to change orders, strikes, failures to obtain materials, or other causes beyond Seagrave's control will be just cause for delay in delivery. The completed Apparatus and Equipment shall be delivered to the Purchaser at:**

**Lexington-Fayette Urban County Government (Lexington Fire Department)
219 East Third Street
Lexington, KY 40508**

4. A competent representative shall, upon request, be furnished by the Seller to demonstrate said Apparatus and Equipment for the Purchaser and to familiarize the Purchaser's employees in the operation and handling of the Apparatus and Equipment.
5. The Purchaser purchases and agrees to pay for the Apparatus and Equipment, the sum of **One Million, Seven Hundred Fifteen Thousand, One Hundred Thirty-Nine Dollars (\$1,715,139.00)** state, federal, FET, or local taxes not included. Payment of any such taxes are the responsibility of the Purchaser. **Price includes a 100% Performance Bond. Payment shall be made in full at time of order, reducing the purchase price by \$90,456.00. The net price to be paid after the Pre-Payment discount shall be \$1,624,683.00.** If payment is not made at the time of the order, the discount will be adjusted accordingly. Any balance due shall be paid, along with all approved modifications required by the Purchaser, at time of final delivery and acceptance on the completed unit.

5.1 All payments shall be made payable to Seagrave Fire Apparatus, LLC and shall be overnight delivered directly to:

*Seagrave Fire Apparatus, LLC
7285 Solutions Center
Chicago, IL 60677-7002*

5.2 The Apparatus and Equipment must be paid in full prior to being placed in fire service.

5.3 If more than one piece of Apparatus and Equipment is covered by this Contract, the above terms of payment shall apply to each piece, and an invoice covering each piece shall be rendered in the proper amount.

6. In the case that no final inspection is made by the Purchaser at the factory prior to shipment and the Purchaser desires to test the Apparatus and Equipment upon receipt, such test shall be made within three (3) days after arrival at the delivery destination specified above. A written report of such test shall be delivered forthwith to the Seller at its principal office at Clintonville, Wisconsin. If no such test be made, or if no such report be made by the Purchaser within three (3) days after arrival, then the Apparatus and Equipment shall be considered as fully complying with the contract specifications.
7. It is agreed that the Apparatus and Equipment covered by this contract shall remain the property of the Seller until the Apparatus and Equipment is delivered and accepted by the Purchaser, such acceptance shall not be unreasonably withheld or delayed. In case of any default in payment the Seller may take full possession of the Apparatus and Equipment, or of the piece or pieces upon which default has been made, and any payments that have been made shall be applied as rent in full for the use of the Apparatus and Equipment up to date of taking possession.
8. In the event that any applicable Federal or State Regulations (DOT, FMVSS, EPA, etc.), National Fire Protection Association Standards or import tariffs which are enacted during the course of this contract, and which requires a change in the contract specifications and purchase price in order for the Apparatus and Equipment to comply with such regulation, the parties will execute a change order describing the change in the specifications and increasing the purchase price by an amount equal to the increase in the costs of producing the Apparatus and Equipment.
9. This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin without regard to principles of conflict of laws. Each party hereby consents that the exclusive venue for any dispute of claim relating to this Agreement shall be in the state courts sitting in Waupaca County, Wisconsin. Each party hereby consents to the personal jurisdiction of such courts.
10. Except for damages, claims or losses due to Seagrave's acts of gross negligence, Purchaser of user, to the extent permitted by law, will indemnify and hold Seagrave and Seagrave's property, free and harmless from any liability for losses, claims, injury to or death of any person, including Purchaser or user, or for damage to property arising from Purchaser or user using and possessing the Apparatus or from the acts or omissions of any person or persons, including Purchaser or user, using or possessing the Apparatus with Purchaser or user's express or implied consent. The provisions hereof shall survive expiration or termination of this Agreement.
11. Risk of loss shall pass to the Purchaser upon delivery and acceptance of the Apparatus and Equipment.
12. To be binding the contract must be signed and approved by an Officer of Seagrave Fire Apparatus, LLC. This contract and mutually agreed specifications and change order documents take precedence over all previous negotiations, and no representations are considered as entering into this contract except as are contained herein or in the mutually agreed specifications and change order documents included herein.

IN WITNESS WHEREOF, the said parties have caused these presents to be executed and the Purchaser has caused its corporate seal to be hereunto affixed, and attested by its authorized representatives, on this

16 day of February 2023

LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, LEXINGTON, KY ("Purchaser")

By Linda Gorton
Please print name here.

By Linda Gorton
Please sign name here

Title Mayor
Purchaser

By _____
Please print name here

By _____
Please sign name here

Title _____
Purchaser

SEAGRAVE FIRE APPARATUS, LLC ("Seller")

By Ulisses D. Parmeziani
Ulisses D. Parmeziani

Title: **President and Chief Executive Officer**
Seller

Date of Acceptance: 01/26/2023

copy in lieu of original



KENTUCKY INFRASTRUCTURE AUTHORITY

Andy Beshear
Governor

100 Airport Road
Frankfort, Kentucky 40601
(502) 573-0260
<https://kia.ky.gov>

Sandy Williams
Executive Director

November 21, 2022

Linda Gorton
Mayor
Lexington-Fayette Urban County Government
200 E Main St
Lexington, KY 40507

KENTUCKY INFRASTRUCTURE AUTHORITY
CONDITIONAL COMMITMENT LETTER
KIA Grant Number 22CWS010
WRIS Project Number SX21067068

Dear Official,

Congratulations on receiving an award of Kentucky Cleaner Water Program (the "CWP") Round 2 grant funds for your Project! The Kentucky Infrastructure Authority (the "Authority") approved the grant request to the Lexington-Fayette Urban County Government (the "Grantee") in the amount of \$2,955,383 for the LFUCG - Brownfields Site Acquisition and Remediation project. We look forward to working with you to successfully complete your Project!

Please be aware that these Round 2 CWP Grant Project funds are provided through the American Rescue Plan Act of 2021, Coronavirus State Fiscal Recovery Fund and must be obligated by December 31, 2024 and fully expended by December 31, 2026. Any funds not obligated by December 31, 2024 or expended by December 31, 2026 will be forfeited and will not be available for the project.

An Assistance Agreement will be executed between the Authority and the Grantee upon satisfactory performance of the conditions set forth in Attachment A. Funds will be available for disbursement only after execution of the Assistance Agreement.

During the course of implementing your project, please inform the Authority of any changes in the project scope and financing plan as soon as possible.



An Equal Opportunity Employer M/F/D

We wish you every success for this project, which will benefit both your community and the Commonwealth as a whole.

Sincerely,



Sandy Williams,
Executive Director

Attachments

cc: Robert Peterson, Project Administrator
Abigail Allan, Lexington-Fayette Urban County Government
Karyn Leverenz, ADD Coordinator
Don Schierer, KIA Grant Analyst
File

Please sign and return a copy of this letter indicating your acknowledgement and acceptance of the commitment and its terms and conditions incorporated by reference and in the Attachments and Exhibits.



Accepted

Date 2/22/2023

EXHIBIT 4

RESOLUTION

RESOLUTION OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT ACCEPTING THE GRANT, APPROVING THE GRANT ASSISTENCE AGREEMENT, AUTHORIZING THE AMENDMENT OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT'S ANNUAL BUDGET, AND AUTHORIZING A REPRESENTATIVE TO SIGN ALL RELATED DOCUMENTS

WHEREAS, the Kentucky General Assembly has appropriated funds for infrastructure projects in House Bill 1 of the 2022 Regular Session of the Kentucky General Assembly for the Cleaner Water Program; and

WHEREAS, the Lexington-Fayette Urban County Government (the "Grantee") has previously determined that it is in the public interest to acquire and construct certain facilities and improvements to the Grantee's utility system (the "Project"); and

WHEREAS, the Grantee desires funding from the Kentucky Infrastructure Authority (the "Authority") for the purpose of acquisition and construction of the Project; and

WHEREAS, in order to obtain a grant from the Cleaner Water Program for the Project, and administered by the Authority, the Grantee is required to enter into an assistance agreement (the "Agreement") with the Authority.

NOW, THEREFORE, BE IT RESOLVED by the governing body of the Lexington-Fayette Urban County Government as follows:

SECTION 1. The Grantee hereby accepts the grant award and approves the Agreement between the Grantee and the Authority to provide the necessary funds to the Grantee for the Project.

SECTION 2. That Linda Gorton is hereby designated to be the Grantee's "Authorized Official" for this Project and is hereby directed and empowered by the Grantee to execute the Agreement, related documents and agreements, and to otherwise act on behalf of the Grantee to effect such grant award, and to engage a qualified Project Administrator.

SECTION 3. That the Grantee hereby agrees and commits to include, by amendment to its annual budget and audit process, the receipts and expenditures of funds subject to the Agreement up to and including the date of Project closeout.

SECTION 4. That this resolution shall take effect at the earliest time provided by law.

ADOPTED on February 22, 2023.

LEXINGTON-FAYETTE URBAN
COUNTY GOVERNMENT

Linda Gordon

Authorized Signatory

CERTIFICATE OF RECORDING OFFICER

I, the undersigned, hereby certify that I am the duly qualified and acting Secretary/Clerk of the Grantee, and that the foregoing is a full, true and correct copy of a Resolution adopted by the governing body of said Grantee at a meeting duly held on February 22, 2023; and that this official action appears as a matter of public record in the official records or journal of the Grantee; and that said meeting was held in accordance with all applicable requirements of Kentucky law, including Sections 61.810, 61.815, 61.820 and 61.823 of the Kentucky Revised Statutes; and that a quorum was present at the meeting; and that this official action has not been modified, amended, revoked or repealed and is now in full force and effect.

IN TESTIMONY WHEREOF, witness my signature, below, on February 22, 2023.

Mackenzie Stock
Secretary/Clerk

