



Commonwealth of Kentucky

CONTRACT MODIFICATION

Document Number:	PON2	129	2400000129	Version: 2
Record Date:				
Document Description:	Wolf Run Watershed Water Quality Basins and Update			
Cited Authority:	PL319 Federal Clean Water Act			
Reason for Modification:	MODIFICATION #1 Date May 14, 2024 Original Contract Amount - \$320,000 Amount of Increase/Decrease - \$0 New Contract Amount - \$320,000 No increase or decrease in funds.			
	This modification is necessary to include current EPA guidelines and current Build America, Buy America Act language. Scope of Services, Invoicing and Assurances Sections have been updated to include current EPA guidelines and Build America, Buy America compliance language. Assurances Section, EPA general terms and conditions link has been updated as well. No increase or decrease in funds or change in scope of work and Finance Terms and Conditions have been updated to the latest version.			

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Effective From: 2023-11-01 **Effective To:** 2027-09-30

Line Item	Delivery Date	Quantity	Unit	Description	Unit Price	Contract Amount	Total Price
1		0.00000		Wolf Run Watershed Water Quality Basins and Update	\$0.000000	\$320,000.00	\$320,000.00

Extended Description:
 Through this project, LFUCG will improve water quality within the Wolf Run Watershed through implementing Best Management Practices (BMPs) and Chapter 7 as recommended by the Wolf Run Watershed Management Plan (WRWMP, 2013). BMP #48 will improve warm water habitat and reduce nonpoint source (NPS) pollution from entering Wolf Run Creek through retrofitting the Regency Road Detention Basin. BMP #49 will improve warm water habitat and reduce NPS pollution from entering Wolf Run Creek through creation of a detention basin, as suggested in the Southland Association's Green Infrastructure Feasibility Study. Implementing Chapter 7 recommendations to update the BMP Table when significant changes have occurred, and new monitoring data has been collected will allow continued momentum in this watershed and new projects to be identified.

Shipping Information:	Billing Information:
Division of Water 300 Sower Blvd, 3rd Floor Frankfort KY 40601	Division of Water 300 Sower Blvd, 3rd Floor Frankfort KY 40601

TOTAL CONTRACT AMOUNT	\$320,000.00
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MODIFICATION #1

Date – May 14, 2024

Original Contract Amount - \$320,000

Amount of Increase/Decrease - \$0

New Contract Amount - \$320,000

No increase or decrease in funds.

This modification is necessary to include current EPA guidelines and current Build America, Buy America Act language. Scope of Services, Invoicing and Assurances Sections have been updated to include current EPA guidelines and Build America, Buy America compliance language. Assurances Section, EPA general terms and conditions link has been updated as well. No increase or decrease in funds or change in scope of work and Finance Terms and Conditions have been updated to the latest version.

Memorandum of Agreement Terms and Conditions

Revised October 2020

This Memorandum of Agreement (MOA) is entered into, by and between the Commonwealth of Kentucky, Energy and Environment Cabinet, Department for Environmental Protection, Division of Water (“the Commonwealth”) and the Lexington Fayette Urban County Government (LFUCG) (“the Contractor”) to establish an agreement for the implementation of the “Wolf Run Watershed Water Quality Basins and Update” project. The initial MOA is effective from November 1, 2023 through September 30, 2027.

I. Scope of Services:

Through this project, LFUCG will improve water quality within the Wolf Run Watershed through implementing Best Management Practices (BMPs) and Chapter 7 as recommended by the Wolf Run Watershed Management Plan (WRWMP, 2013). BMP #48 will improve warm water habitat and reduce nonpoint source (NPS) pollution from entering Wolf Run Creek through retrofitting the Regency Road Detention Basin. BMP #49 will improve warm water habitat and reduce NPS pollution from entering Wolf Run Creek through creation of a detention basin, as suggested in the Southland Association’s Green Infrastructure Feasibility Study. Implementing Chapter 7 recommendations to update the BMP Table when significant changes have occurred, and new monitoring data has been collected will allow continued momentum in this watershed and new projects to be identified.

LFUCG shall complete the following goals, objectives and activities.

Goal: Improve warm water habitat and reduce NPS pollution from entering Wolf Run Creek through retrofitting the Regency Road Detention Basin (BMP #48 in the WRWMP, 2013).

Objective: Reduce stormwater runoff and pollutant levels through infiltration or storage (WRWMP Objective 2.1).

Activities:

LFUCG will remove the concrete channels (500 LF) from existing commercial stormwater basin and, if possible, naturalize channels to encourage infiltration and dispersal of stormwater flows across more of the basin bottom.

Objective: Reduce nutrients entering Wolf Run Creek (WRWMP Objective 4.2).

Activities:

Install native plants and trees in the water quality basin to filter and absorb excess nutrients.

Objective: Reduce temperature of stormwater discharge (WRWMP Objective 4.1).

Activities:

Install native trees in water quality basin and upstream watershed, where possible.

Objective: Create passive recreational and educational opportunities (WRWMP Objective 4.3).

Activities:

Determine if existing chain-link fence may be removed to create public access to basin.

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Hold one on-site meeting, to engage local stakeholders, to comment on draft project design.
 Create and install educational signage. Topics could include, but are not limited to, how native plants work, habitat creation within basin, and/or how citizens can help the environment.
 If the fence is removed, benches will be placed at the edges of the basin to provide an outdoor setting for lunches and breaks for nearby offices.
 Remove invasive species and replant with native species to promote pollinator species.

Objective: Determine effectiveness of project (WRWMP Objective 5.2).

Activities:

Complete two pre- and post-construction water quality monitoring events, per LFUCG 2017 approved Watershed-Focused Monitoring Program QAPP.
 Publish results at appropriate locations, including but not limited to the following webpages: LFUCG Wolf Run Watershed, KY River Watershed Watch, and/or Friends of Wolf Run.

Goal: Improve Warm Water Habitat and Reduce Non-Point Source Pollution from Entering Wolf Run Creek through creation of a detention basin, as suggested in the Southland Association’s Green Infrastructure Feasibility Study (BMP #49 in the WRWMP, 2013).

Objective: Reduce pollutant levels through stormwater treatment, storage or redirection (WRWMP Objective 5.1).

Activities:

Divert stormwater from a drainage channel parallel to the railroad tracks into a constructed filtration basin on Derby Drive, and discharge the filtered flow back into the storm sewer parallel to Regency Road.
 Investigate and install, if funding allows, best value-added BMP (structural or chemical) to reduce fine sediment from railroad tracks.

Objective: Reduce nutrients entering Wolf Run Creek (WRWMP Objective 4.2).

Activities:

Install native plants and trees in water quality basin to filter and absorb excess nutrients.

Objective: Reduce temperature of stormwater discharge (WRWMP Objective 4.1).

Activities:

Install native trees in water quality basin and upstream watershed, where possible.

Objective: Create passive recreational and educational opportunities (WRWMP Objective 4.3).

Activities:

Hold one on-site meeting, to engage local stakeholders, to comment on draft project design.
 Create and install educational signage. Topics could include, but are not limited to, how native plants work, habitat creation within basin, and/or how citizens can help the environment.
 Remove invasive species and replant with native species to promote pollinator species.

Objective: Determine effectiveness of project (WRWMP Objective 5.2).

Activities:

Complete two pre- and post-construction water quality monitoring events, per LFUCG 2017 approved Watershed-Focused Monitoring Program QAPP.
 Publish results at appropriate locations, including but not limited to the following webpages: LFUCG Wolf Run Watershed, KY River Watershed Watch, and/or Friends of Wolf Run.

Goal: Implement Chapter 7 Recommendations of the WRWMP (2013) to update the BMP Table when significant changes have occurred and new monitoring data has been collected by following Division of Water (DOW) NPS & Basin Team Section Watershed Plan Update Guidance (2022).

Objective: Implement water quality monitoring.

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Activities:

Complete two instream wet weather monitoring activities, per LFUCG 2017 approved Watershed-Focused Monitoring Program Quality Assurance Project Plan (QAPP).

Objective: Update pollutant load reduction spreadsheet.

Activities:

Compile all existing water quality data from 2013 to present.
 Update pollutant load reduction tables from WRWMP 2013.
 Compare pollutant load tables from 2013 to present.
 Determine additional BMPs, if any, needed to achieve water quality standards/benchmarks.
 Update Water Quality Maps.

Objective: Update WRWMP BMP Table.

Activities:

Reconvene Wolf Run Watershed Council (WRWC) and meet, at a minimum, every quarter during grant.
 Update WRWMP BMP Table using information from Goal Objective 3.2 and following Chapter 6 of the Kentucky (KY) Watershed Planning Guidebook.
 Update WRWMP BMP Maps.
 Create an addendum in the WRWMP showing all projects completed to date.

Plan of Work

The overall goal of implementing water quality projects recommended in the WRWMP (2013) and by updating the BMP Table in the WRWMP is to continue the momentum to improve water quality that the residents, professionals, and government officials have created over the years of dedication to the Wolf Run Watershed. This will be achieved through several activities noted above and detailed below.

One project the WRWMP BMP Table (#48) recommends is to retrofit a commercial basin that drains 22 acres of professional office area. There is 500LF of concrete channel running through this basin, 280LF is classified as an ephemeral stream, and the entire concrete channel will be removed and a more natural drainage waterway within the detention basin will be created. This drainage channel will not be a full stream restoration due to constraints and integrity of the detention basin; however, by removing the concrete channels, it will encourage infiltration, dispersal of stormwater flows across more of the basin bottom, and filtration through native plants and trees. The basin is currently turf mowed, but through this retrofit process, the grass and any invasive species will be removed and native plants and trees installed. In addition, evaluation of the necessity of the chain-link fence will occur. If possible, this fence will be removed and benches will be placed at the edges of the basin to provide an outdoor setting for passive recreation.

LFUCG Division of Water Quality (DWQ) completed a portion of WRWMP BMP #49 - Southland Association's Green Infrastructure Feasibility Study (aka Southland Area Storm Drainage Project) in 2018. One project the Southland Study recommended was to divert stormwater from a drainage channel parallel to the railroad tracks (3,200 LF) into a filtration basin to capture pollutants, specifically sediment, from this drainage area (21 acres). There is a storm sewer system that captures this drainage area 75 feet from LFUCG-owned water quality lots off Derby Drive. This project proposes to divert this stormwater onto city property, thru an existing utility easement, and allow it to migrate through a filtration basin prior to it flowing back into the stormwater system off Regency Road. This property is within a small neighborhood and to enhance the look, along with function, flowering native plants and trees will be installed for color and to encourage pollinator species to use this area. Additionally, educational signage will be installed and this area will be used for BMP tours, a geocaching location, passive recreation (bird watching), etc.

To determine effectiveness of these two BMPs, pre- and post-construction monitoring at the instream outfall on Southland Drive will occur during 4 wet weather events (2 pre and 2 post). These monitoring events will follow the QAPP approved for the LFUCG Watershed-Focused Monitoring Program. The results will be incorporated into the updated WRWMP, 2013, discussed below.

Public input and education is a large part of the detention basin projects. As a part of this grant, the WRWC will be reactivated to meet, at a minimum, on a quarterly basis to discuss design ideas, educational signs, and monitoring results. The public will be invited to attend these meetings through advertisement in various platforms

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and outlets, such as, but not limited to, Facebook (Live Green Lexington, Friends of Wolf Run, etc.), Council Member Newsletters, Next Door, and email.

While the Council is reconvened, it is also an ideal time to update the BMP Table of the WRWMP using the Watershed Plan Update Guidance (KDOW 2022). The WRWC will also work closely with other stakeholders in the watershed, including but not limited to, Friends of Wolf Run, University of Kentucky, Kentucky River Watershed Watch, etc., to assist in updating this BMP Table.

Since the completion of the approved WRWMP, 2013, 30-40 projects have been implemented and recommended studies completed. In addition, the LFUCG Watershed-Focused Monitoring Program is completing an instream sampling within the Wolf Run Watershed in 2022-2023. The results from this monitoring program, and two additional wet weather monitoring events, will be used to compare to the original water quality data to see if these projects have made an improvement in the watershed. Not only will this comparison be made, the new water quality monitoring information will be used to update the pollutant load calculation worksheets and determine if any additional projects need to be added to the WRWMP BMP Table. Several other studies, such as the Urban Tree Canopy Report (UTC, 2022) will also be used to identify additional small scale projects with the watershed. The BMP Table will also be updated by removing the projects completed to date and creating an addendum to the WRWMP with project information. In addition, water quality maps and BMP implementation maps will be updated. This information will be shared through an interactive map on-line (similar to the tool created for the West Hickman Watershed). The end goal is to add this updated BMP Table as an approved addendum to the WRWMP, 2013.

Through the purchasing process, LFUCG will contract with a qualified engineering firm to complete all required work associated with the two detention basin projects and the BMP Table update. In addition, LFUCG will hire Friends of Wolf Run to assist in advertising and running on-site public input meetings and Wolf Run Watershed Council meetings.

Quality Assurance Project Plan (QAPP)

This section is only applicable if monitoring or sampling occurs during this project.

LFUCG will develop and submit to the Cabinet for review and approval, a QAPP for the environmental monitoring activities associated with the project described in this Agreement. No project monitoring activities will occur until the QAPP has been reviewed and approved by the Cabinet. LFUCG will ensure that all environmental monitoring activities in this Agreement will be conducted in accordance with the approved QAPP. The approved QAPP will be incorporated into this Agreement by reference.

The Kentucky Division of Water (DOW) requires submittal of a data package after each sampling period, which should include Chain-of-Custody forms, field notes, calibration records of all instrumentation, and a raw data file as submitted from the laboratory. The package will also include relevant notes from field work identifying issues encountered, action needed or changes made to the sampling plan or QAPP. All issues or changes must also be communicated to DOW nonpoint source staff as soon as possible.

A final summary of overall project quality assurance will be submitted at the end of the project. The final Quality Assurance (QA) report should explain and detail the quality processes and controls used in sampling, both by the laboratory and in the field. Examples of QA report content are listed below. The report should summarize the sampling results and outline any and all deficiencies or discrepancies in the data collection and analysis process.

Examples of a QA report content are:

Types and results of quality control samples; field blanks, field splits, field duplicates. Discussion of how the Quality Control (QC) samples met the precision, accuracy, completeness, bias data quality objectives from the QAPP. Explanation of data qualifiers and how it affected the data results (data that is flagged by the laboratory). Corrective action taken for any data quality issues.

Best Management Practices Implementation Plan

This section is only applicable if BMP's occur during this project.

LFUCG shall develop and submit to the Cabinet for review and approval, a Best Management Practices (BMP) Implementation Plan for all BMP implementation activities associated with the project described in this Agreement. No BMP implementation activities shall occur until the BMP Implementation Plan has been approved by the Cabinet. LFUCG shall ensure that all BMP implementation activities in this Agreement shall be conducted in

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accordance with the approved BMP Implementation Plan. The approved BMP Implementation Plan shall be incorporated into this Agreement by reference.

The BMP Implementation Plan shall include: (1) a list of BMP technologies to be installed; (2) a description of the technology selection process, to include the estimated cost, relative treatment efficiency, and the minimum operation and maintenance required for the BMP to operate efficiently; (3) a description of how BMPs shall be targeted to specific locations and if locations are known, a map(s) clearly showing the location where the BMP technologies shall be demonstrated; (4) a means of notifying the Division of Water, Nonpoint Point Source (NPS) Section prior to BMP implementation; (5) a financial plan of action, which describes how financial assistance shall be provided for technology demonstration; (6) the type of maintenance agreement to be made with the landowner; and (7) a statement that ensures that all agricultural or forestry BMPs will be consistent with the Kentucky Agriculture Water Quality Act and/or the Forest Conservation Act.

Education Materials

LFUCG shall ensure that all materials to be used in school-based education shall conform to the Kentucky Academic Standards for Assessment. When materials are submitted, the corresponding section of the Kentucky Academic Standards must be cited.

LFUCG shall ensure that all outreach materials conform to the North American Association for Environmental Education's (NAAEE) *Environmental Education Materials: Guidelines for Excellence* (www.NAAEE.org).

Geographic Information System (GIS) Activities

LFUCG shall ensure that all geospatial data created shall be consistent with Federal Geographic Data Committee (FGDC) endorsed standards. Information on these standards shall be obtained from the web site "www.fgdc.gov" under the topics of "standards" and "publications".

Animal Feeding Operation (AFO) Activities

LFUCG shall ensure that any AFO receiving financial assistance from 319(h) funds will implement a nutrient management plan. An AFO is defined by 40 C.F.R. § 122.23(b) as any lot or facility (other than an aquatic animal production facility) where i) animals (other than aquatic animals) have been, are, or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12 month period, and ii) where crops, vegetation forage growth, or post-harvest residues are not sustained over any portion of the lot or facility.

Training

All personnel involved in monitoring activities that are performed by LFUCG or sub-contractor will be provided (or required to develop) standard operating procedures (SOPs), and will be trained in sampling techniques by DOW staff. This training will be a part of the NPS project conditions, and will not incur any additional cost to the vendor.

Build America, Buy America (BABA) Act

The Subrecipient must be equipped to fully comply with all administrative requirements associated with the provisions of the Build America, Buy America (BABA) Act, Public Law No. 117-58, §§ 70901-27. Therefore, Subrecipients must prepare contracts and notices of award to include required BABA language (Appendix A). Subrecipients are also required to perform oversight duties associated with BABA provisions and includes requiring the submission of a Contractor Certificate of Compliance with Build America, Buy America Provisions for Federally Assisted Contracts (Appendix C) by contractors and subcontractors along with required receipts and supporting documentation.

Measures of Success

LFUCG staff will:

Goal: Improve Warm Water Habitat and Reduce Non-Point Source Pollution from entering Wolf Run Creek through Retrofitting the Regency Road Detention Basin (BMP #48 in the WRWMP, 2013).

Objective: Reduce stormwater runoff and pollutant levels through infiltration or storage.

Measures of Success:

In-Stream Water Quality Monitoring Results
Pre, Mid & Post Construction Photo Documentation
Square Feet (SqFt) of Native Plants Installed
Numbers of Trees Installed

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Objective: Reduce nutrients entering Wolf Run Creek.

Measures of Success:

In-Stream Water Quality Monitoring Results
Pre, Mid & Post Construction Photo Documentation
SqFt of Native Plants Installed
Numbers of Trees Installed

Objective: Reduce temperature of stormwater discharge.

Measures of Success:

In-Stream Water Quality Monitoring Results
SqFt of Native Plants Installed
Numbers of Trees Installed

Objective: Create passive recreational and educational opportunities.

Measures of Success:

SqFt of Native Plants Installed
Numbers of Trees Installed
Numbers of Educational Signs Installed
Attendance at Public Meetings
Updated WRWMP BMP Table
Update WRWMP Water Quality & BMP Maps
Create online interactive map with BMP information

Objective: Determine effectiveness of project.

Measures of Success:

In-Stream Water Quality Monitoring Results
Pre, Mid & Post Construction Photo Documentation

Goal: Improve Warm Water Habitat and Reduce Non-Point Source Pollution from Entering Wolf Run Creek through creation of a detention basin, as suggested in the Southland Association's Green Infrastructure Feasibility Study (BMP #49 in the WRWMP, 2013).

Objective: Reduce pollutant levels through stormwater treatment, storage or redirection.

Measures of Success:

In-Stream Water Quality Monitoring Results
Pre, Mid & Post Construction Photo Documentation
SqFt of Native Plants Installed
Numbers of Trees Installed

Objective: Reduce nutrients entering Wolf Run Creek.

Measures of Success:

In-Stream Water Quality Monitoring Results
Pre, Mid & Post Construction Photo Documentation
SqFt of Native Plants Installed
Numbers of Trees Installed

Objective: Reduce temperature of stormwater discharge.

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Measures of Success:

In-Stream Water Quality Monitoring Results
 SqFt of Native Plants Installed
 Numbers of Trees Installed

Objective: Create passive recreational and educational opportunities.

Measures of Success:

SqFt of Native Plants Installed
 Numbers of Trees Installed
 Numbers of Educational Signs Installed
 Attendance at Public Meetings
 Updated WRWMP BMP Table
 Update WRWMP Water Quality & BMP Maps
 Create online interactive map with BMP information

Objective: Determine effectiveness of project.

Measures of Success:

In-Stream Water Quality Monitoring Results
 Pre, Mid & Post Construction Photo Documentation

Goal: Implement Chapter 7 Recommendations of the WRWMP (2013) to update the BMP Table when significant changes have occurred and new monitoring data has been collected by following DOW NPS & Basin Team Section Watershed Plan Update Guidance (2022).

Objective: Implement water quality monitoring.

Measures of Success:

In-Stream Water Quality Monitoring Results
 Pre, Mid & Post Construction Photo Documentation

Objective: Update pollutant load reduction spreadsheet.

Measures of Success:

In-Stream Water Quality Monitoring Results
 Update WRWMP Water Quality & BMP Maps

Objective: Update WRWMP BMP Table

Measures of Success:

Updated WRWMP BMP Table
 Update WRWMP Water Quality & BMP Maps
 Create online interactive map with BMP information

Reports

LFUCG shall:

Provide a quarterly programmatic report. The report shall cover progress to date, any problems encountered and actions taken and any anticipated activity and work products expected during the next quarter as outlined in the Project Status Report Template below. Provide a final report detailing activities and deliverables completed during the agreement period. The final report is due 30 days after the end of the project. All reports shall be submitted

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electronically to the Commonwealth within specified timeframes listed above and in the format included in the Project Status Report Template.

Project Status Report Template

Grant Recipient Name: Lexington Fayette Urban County Government

Project Name: Wolf Run Watershed Water Quality Basins and Update

Principal Investigator/Project Manager: Demetria Kimball Mehlhorn

Reporting Period: (month & year)

Accomplishments, publicity, news:

(Provide an update on project activities, any publicity on the project, including links to articles)

Performance outcome data/metrics:

(Provide updates on specific activity targets, project timelines and/or metrics from the grant agreement)

Problems, issues, variances from plan:

(Provide updates on any problems with project activities, timelines, any variances from the original work plan)

Project Status Report Template

Section 319(h) Nonpoint Source Project Progress Report

Reporting Period:--/-- to --/-- Grant: PPG -BG-00D21423 State: Kentucky

Project Name: Wolf Run Watershed Water Quality Basins and Update

Contractor: LFUCG

Federal amount: \$320,000

Budget Period Start Date: 11/1/23 End Date: 9/30/27 Total Project Cost: \$533,333

Expended this Period: \$_____ Total Expenditures to Date: \$_____

Waterbody/Watershed Identification: Kentucky

NPS Category: Sedimentation/Siltation, Suspended Solids, Pathogens/Bacteria, Pesticides, Oil and Grease, Nutrients

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Purpose Statement: The goal of this project is to improve water quality within the Wolf Run Watershed through implementing Best Management Practices (BMPs) and Chapter 7 as recommended by the Wolf Run Watershed Management Plan (WRWMP, 2013).

LFUCG's Milestones

All milestones will begin on November 1, 2023 and end on September 30, 2027.

Develop and submit materials to Division of Water for review and comment. Duration of Contract

Submit advanced written notice to Nonpoint Source (NPS) Program staff for all educational public meetings, field days, workshops, etc. Duration of Contract

Submit draft news articles, brochures, newsletter articles and other educational outreach materials to NPS Program staff for approval - includes drafts of flyers and postcards inviting public to meetings and events. Duration of Contract

Submit an Annual Load Reduction Report to NPS program staff if requested. Duration of Contract

Notice to Proceed & Council Acceptance. November 2023 – November 2024

Obtain Consulting Engineer through LFUCG Procurement Process for Engineering Services. November 2023 – January 2024

Start gathering information and contacts for public involvement. November 2023 – January 2024

Quarterly Wolf Run Watershed Council Meetings, Duration of Contract

Update Webpage with project information as available. Duration of Contract

Develop and submit a BMP Implementation Plan for DOW staff approval. January 2024 – February 2024

Submit Approved LFUCG Watershed-Focused Monitoring QAPP with updated Wolf Run Sampling Location, if needed, to DOW. February 2024

Create preliminary design plans and hold public input meeting. February 2024 – June 2024

Complete two rounds of wet weather in-stream water quality monitoring. March 2024 – May 2024

Meet with permitting agencies on stream permitting requirements. March 2024

Update pollutant load reduction calculation sheet. May 2024 – July 2024

Submit preliminary design plans for review to DOW NPS staff, LFUCG staff, utilities, and Wolf Run Watershed Council. June 2024

Submit Pollutant Load Reduction Information to DOW and share with WRWC. July 2024

Create addendum to WRWMP of completed projects. July 2024 – July 2025

Prepare design plans for permit submittals. July 2024 – September 2024

Submit required permit applications. September 2024

Prepare final design plans, specifications, quantity take-offs, and construction cost estimates. October 2024 – January 2025

Update WRWMP BMP Table & Maps. October 2024 – July 2025

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Obtain Construction Contractor through LFUCG Bid Procurement Process for Construction Contracts. January 2025 – March 2025

Design & Submit Educational Signage to KDOW NPS staff and WRWC for review and approval. January 2025 – March 2025

Construct Improvements. April 2025 – September 2026

Submit WRWMP Completed Projects Addendum & Updated BMP Table to KDOW. August 2025 – November 2025

Install Education Signage. March 2026 – May 2026

Project Completion Tour. September 2026

Complete two post-construction monitoring events. May 2026 – September 2026

Prepare and Submit Draft Final Report. August 2027

Incorporate any changes and submit Approved Final Report. September 2027

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Signature Date

Notifications

All notices, requests, demands, waivers, and other communications given as provided in this Agreement shall be in writing and sent to the following:

LFUCG
 Attn: Demetria Kimball Mehlhorn
 200 East Main Street, 9th Floor
 Lexington, Kentucky 40507
 859-425-2554
 dkimball@lexingtonky.gov
 Vendor UEI Number: VM1GLHWZXA96

Division of Water
 Attn: Mike Reed
 300 Sower Blvd., Third Floor NW/29
 Frankfort, Kentucky 40601
 502-782-6892
 Mike.Reed@ky.gov

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II. Pricing:

The Commonwealth shall reimburse LFUCG up to \$320,000 for services and activities as outlined in the Program Budget table below.

Program Budget

Categories	The Commonwealth	Cost Share/ In-kind Match	Total
Personnel	\$0	\$0	\$0
Fringe Benefits	\$0	\$0	\$0
Travel	\$0	\$0	\$0
Equipment	\$0	\$0	\$0
Supplies	\$0	\$6,000	\$6,000
Construction	\$0	\$0	\$0
Other	\$0	\$0	\$0
Total Direct Charges	\$0	\$6,000	\$6,000
Indirect Charges (up to 10% of the Commonwealth's Total Direct Charges) **	\$0	\$0	\$0
Contractual	\$320,000	\$207,333	\$527,333
Total	\$320,000	\$213,333	\$533,333
Program Income	\$0	\$0	\$0

A detailed budget template provided by the Commonwealth shall be completed and submitted to DOW prior to the start of the project and before the start of each fiscal year

INDIRECT COST:

If the contractor is receiving state funds the contractor may not charge indirect costs in excess of ten (10) percent of total direct costs. An indirect rate **shall not** be charged on contractual expenditures. Indirect charges exceeding the ten (10) percent shall be considered as cost share provided by the contractor.

If the contractor is receiving federal funds the Contractor shall use the indirect rate corresponding with the agreement the contractor has with the federal entity or ten (10) percent. The contractor shall provide a copy of the indirect agreement prior to the federal funds being awarded.

III. Invoicing

LFUCG shall:

Invoice the Commonwealth quarterly for authorized expenditures by budget line item.

The invoice must indicate:

1. The Document ID number, which can be found at the top of the MOA/PSC. The Document ID number can be recognized by the beginning letters "PON2" or "SC"
2. Invoice number
3. Invoice date
4. Dates of service covered
5. Current expenditures with each item listed separately
6. Cumulative expenditures to date
7. Current cost share or match, if identified in the Program Budget
8. Cumulative cost share or match
9. Include a copy of the transaction detail report if available and/or receipt

Backup documentation must be maintained for each invoice, as required by the record retention schedule in Kentucky's Administrative Regulation 725 KAR 1:061 and/ or 2CFR 200.334 through 200.338. The backup documentation can either be submitted with the invoice or kept for inspection by the Commonwealth, if or when requested.

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Examples of backup documentation may include:

1. Personnel – payroll spreadsheet showing time worked within the invoice period. Spreadsheet shall contain salary information, name of employee or some identifiable number, percent of time applied to grant, along with the number of hours and fringe benefits per person.
2. Fringe – include in payroll spreadsheet.
3. Travel – travel voucher or invoices showing airfare, hotel expenses, etc. Mileage will be paid based on rate established through a travel policy by the recipient. If no rate has been established, the recipient may use the state or federal mileage rate.
4. Equipment – receipt marked paid (an invoice shall be submitted after equipment is paid for).
5. Supplies – receipt marked paid (an invoice shall be submitted after supplies are paid for).
6. Contractual – invoice and documentation that item has been paid (recipient shall verify invoice).
7. Construction – invoices, receipts marked paid and any other documents that properly verify expenses.
8. Indirect costs – will be verified not to exceed the allowable rate established in the MOA.
9. Other – invoice and documentation that item has been paid (recipient shall verify invoice).

In the event that LFUCG incurs no expenses within a reporting timeframe, LFUCG shall submit an invoice for zero (0) dollars or provide a “notice of no expenses,” based on the Commonwealth’s requirements.

Final Invoice: The final invoice should be clearly marked as “FINAL INVOICE” to indicate that all funds that will be expended, have been expended.

The request for payment must include a Build America, Buy America Report of Compliance (Appendix B) signed by the subrecipient, the Contractor Certificate of Compliance with Build America, Buy America (Appendix C) signed by the applicable contractor or subcontractor and supporting documentation.

Where to submit invoices:

All invoices shall be submitted via email to:

Division of Water
 Attn: Mike Reed
 300 Sower Blvd., Third Floor NW/29
 Frankfort, Kentucky 40601
 502-782-6892
 Mike.Reed@ky.gov

In the subject line of the email list:

Project Number 23-07, Invoice #

IV. Assurances:

Award Number: FFY-2023 Performance Partnership Grant–PPG BG - 00D21423, CFDA 66.605.

The parties shall abide by all terms of the award:

LFUCG agrees to comply with the current EPA general terms and conditions available at

<https://www.epa.gov/grants/epa-general-terms-and-conditions-effective-october-1-2019-or-later>

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<https://www.epa.gov/grants/epa-general-terms-and-conditions-effective-october-1-2022-or-later>

The following is a list of statutory, regulatory, and Executive Order requirements for subrecipients on EPA funded projects per 2 CFR 200.331(a) (2). As a subrecipient of EPA funding, you must agree to abide by the applicable requirements listed below.

1. Nondiscrimination Laws and Social Policies

Most EPA financial assistance recipients are subject to the laws and policies described below. This list of nondiscrimination and social policy requirements is for informational purposes only and is not intended to provide guidance on compliance in the context of a particular EPA assistance agreement.

Disadvantaged Business Enterprises

EPA regulations at 40 CFR Part 33, “Participation by Disadvantaged Business Enterprises in U.S. Environmental Protection Agency Programs” set forth requirements for making good faith efforts to ensure that Disadvantaged Business Enterprises, including Minority Business Enterprises and Women’s Business Enterprises receive a fair share of contracts awarded with funds provided by EPA financial assistance agreements. These requirements apply to subrecipients in accordance with 40 CFR 33.102 and the definition of “Recipient” in 40 CFR 33.103.

2. Financial Management Policies

These policies apply to transactions financed by EPA financial assistance funds and apply to both pass-through entities and subrecipients on the basis of either regulatory requirement or the General Terms and Conditions (T&C) of the pass-through entity’s agreement with EPA.

Federal Funding Accountability and Transparency Act

As set forth in the General Condition of the pass-through entity’s agreement with EPA entitled “Reporting Subawards and Executive Compensation” the pass-through entity must ensure that subrecipients comply with Federal Funding Accountability and Transparency Act (FFATA) reporting requirements.

Suspension and Debarment

The pass-through entities responsibilities are described at 2 CFR Part 180, Subpart C and the “Debarment and Suspension” T&C of the pass-through entity’s agreement with EPA. These requirements, which include checking SAM to ensure that potential contractors, subrecipients and their principals and agents are not suspended, debarred or otherwise ineligible to participate in Federal assistance programs also apply to subrecipients. It is important to note that in addition to being precluded from all first tier contracts and all contracts requiring EPA approval in accordance with 2 CFR 180.220 under 2 CFR 1532.220 suspended or debarred parties may not receive EPA funded contracts in excess of \$25,000 at any tier. Also, at 2 CFR 1532.995 EPA has identified activities that suspended or debarred parties may not perform as a “Principal” in EPA financial assistance agreements and subawards.

New Restriction on Lobbying, 40 CFR Part 34

Subrecipients must submit certification and disclosure forms required by 40 CFR 34.110 and the “Lobbying and Litigation” T&C for subawards in excess of \$100,000.

Uniform Grant Guidance Requirements (UGG)

Subrecipients must comply with 2 CFR Part 200 requirements when they award procurement contracts, make subawards, and incur other costs borne by EPA financial assistance.

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3. Environmental Authorities

These requirements typically apply when an EPA funded project involves construction, remediation of contamination in water, soil, or buildings, and similar activities which alter the physical environment. Other environmental laws may apply to a project independent of EPA funding. Financial assistance for research, training, technical assistance and related outreach, environmental education, program operations, or installation of pollution control equipment on vehicles or vessels, are generally not affected by these requirements. Note that this list of environmental authorities is for informational purposes only and is not intended to provide guidance on compliance in the context of a particular EPA assistance agreement.

Clean Air Act and Clean Water Act

Section 306 of the Clean Air Act (CAA) and section 508 of the Clean Water Act (CWA), as implemented by Executive Order 11738 (1973), prohibit performance of Federal assistance agreements at facilities disqualified due to certain violations of the CAA or CWA. Disqualified facilities are listed in the System for Award Management. Subrecipients are required to check SAM, to determine if facilities that will be used to perform contracts or subawards are listed in SAM.

National Environmental Policy Act

Where applicable, the National Environmental Policy Act (NEPA) requires federal agencies to conduct an environmental review of their proposed actions, with a view toward ensuring informed decision-making and public input. EPA's NEPA regulations are at 40 CFR Part 6, and note that certain EPA actions are exempt from NEPA. Pass-through entities and subrecipients may be required to assist EPA with NEPA compliance, where appropriate.

National Historic Preservation Act

Section 106 of the NHPA requires federal agencies to take into account the effects of their undertakings on historic properties and to provide the Advisory Council on Historic Preservation (ACHP) a reasonable opportunity to comment on such undertakings. Under the ACHP's regulations, consultations generally occur in the first instance with state and/or tribal historic preservation officials, with direct ACHP involvement in certain cases. EPA funded projects with the potential to affect historic properties – i.e., properties listed in or eligible for listing in the National Register of Historic Places – may implicate this statute. This may include, for instance, EPA-funded projects that involve alteration of structures (e.g., asbestos abatement) that are historic properties or construction/remediation on culturally sensitive lands. Pass-through entities should work with their Project Officer to ensure that subrecipients are available to work with EPA on any required consultation process with the State or Tribal Historic Preservation Office prior to commencing the project to ensure compliance with section 106 of the NHPA.

Protection of Wetlands, Executive Order 11990 (1973), as amended

EPA funded projects involving new construction in wetlands may implicate this Executive Order. The terms and conditions of the EPA assistance agreement may require pass-through entities to ensure that subrecipients assist EPA in determining whether a proposed project will be located in (or affect) a wetland, and if so, evaluating practicable alternative locations for the project or other mitigation.

Coastal Zone Management Act

This statute requires EPA to ensure that Agency funded activities in coastal areas are consistent with state coastal zone management plans that have been approved by the Department of Commerce. Pass-through entities and subrecipients should consult directly with the state Coastal Zone Management agency during the planning stages to ensure that the EPA funded project will be consistent with the state's coastal zone management plan.

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Coastal Barriers Resources Act

This statute restricts federal financial assistance that would encourage development in the Coastal Barriers Resources System, a collection of undeveloped and ecologically sensitive barrier formations along the Atlantic and Gulf Coasts of the United States, and the shore areas of the Great Lakes, and adjacent wetlands, marshes, estuaries, inlets, and near-shore waters. During the planning phase of a proposed project located in the Coastal Barriers Resources System, pass-through entities and subrecipients should consult with the state Coastal Zone Management agency to determine whether a proposed project will have an effect on the system, and if so, the alternative sites or mitigating measures that must be incorporated in the project's design.

Wild and Scenic Rivers Act

This statute prohibits federal assistance for water resource projects that would have direct and adverse effects on, invade, or unreasonably diminish, the special values of a congressionally designated wild and scenic river. Pass-through entities and subrecipients should consult with appropriate state or federal (National Park Service or Bureau of Land Management) agency to determine whether the project or any alternatives under consideration may affect a designated river.

Endangered Species Act (ESA)

This statute requires Federal agencies to ensure that their activities are not likely to jeopardize endangered species, adversely modify designated critical habitats, or incidentally take (injure or kill) endangered animals without authorization, in consultation with the appropriate federal wildlife agency (the U.S. Fish and Wildlife Service or National Marine Fisheries Service) as described in 50 CFR Part 402. The ESA consultation process is triggered when an action "may affect" ESA-protected species or critical habitat. Pass-through entities and subrecipients should coordinate with EPA to ensure consultation occurs where appropriate."

Safe Drinking Water Act

Precludes the use of EPA financial assistance for projects that would contaminate sole source aquifers. Pass-through entities and subrecipients must contact state officials to determine whether a sole source aquifer is in the vicinity of the proposed project. If a sole source aquifer is in the project planning area, then the assistance recipient, in consultation with state ground water officials, must conduct investigations to determine if the aquifer could be contaminated by the project. If the project could potentially affect ground water supplies, the assistance recipient, in consultation with ground water officials, must elect an alternative site or devise adequate mitigating measures.

Build America, Buy America (BABA) Act

The Subrecipient agrees to comply with the BABA Act requirements in the Infrastructure Investment and Jobs Act, P.L. 117-58, §§ 70911-70917, as described in the EPA General Terms and Conditions. These requirements do not supersede the American Iron and Steel requirement; both requirements apply and work in conjunction.

Subrecipients of an award of Federal financial assistance are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:

1. all iron and steel used in the project are produced in the United States--this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
2. all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard for determining the minimum amount of domestic content of the manufactured product has been established under applicable law or regulation; and

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3. all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project.

For further information on the Buy America preference, please visit www.doi.gov/grants/BuyAmerica. Additional information can also be found at the White House Made in America Office website: www.whitehouse.gov/omb/management/made-in-america/.

DOMESTIC PREFERENCE REQUIREMENTS:

1. American Iron and Steel

The Subrecipient agrees that treatment works projects must comply with the American Iron and Steel requirement which provides that the iron and steel products used in the project must be produced in the United States, unless a waiver is granted.

(a) *Definitions.* As used in this award term and condition—

(1) “iron and steel products” means the following products made primarily of iron or steel: lined or unlined pipes and fittings, manhole covers and other municipal castings, hydrants, tanks, flanges, pipe clamps and restraints, valves, structural steel, reinforced precast concrete, and construction materials.

(2) *Steel* means an alloy that includes at least 50 percent iron, between .02 and 2 percent carbon, and may include other elements.

(b) *Domestic preference.*

(1) This award term and condition implements the Water Resources Reform and Development Act of 2014 (WRRDA) by requiring that all iron and steel products used for a project for the construction, alteration, or repair of a treatment work are produced in the United States except as provided in paragraph (b)(2) and (b) (3) of this section and condition.

(2) This requirement does not apply with respect to a project if a State agency approves the engineering plans and specifications for the project, in that agency’s capacity to approve such plans and specifications prior to a project requesting bids, prior to January 17, 2014.

(3) This requirement shall not apply in any case or category of cases in which the Administrator of the Environmental Protection Agency finds that:—

- (1) applying the requirement would be inconsistent with the public interest;
- (2) iron and steel products are not produced in the United States in sufficient and reasonably available quantities and of a satisfactory quality; or
- (3) inclusion of iron and steel products produced in the United States will increase the cost of the overall project by more than 25 percent.

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**Memorandum of Agreement Standard Terms and Conditions
Revised April 2024**

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.

The vendor shall be paid, upon the submission of proper invoices to the receiving agency at the prices stipulated for the supplies delivered and accepted, or services rendered. Unless otherwise specified, payment will not be made for partial deliveries accepted. Payments will be made within thirty (30) working days after receipt of goods or a vendor's invoice in accordance with KRS 45.453 and KRS 45.454.

2.00 EEO Requirements

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

3.00 Cancellation Clause

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

4.00 Funding Out Provision

The state agency may terminate this agreement if funds are not appropriated to the contracting agency or are not otherwise available for the purpose of making payments without incurring any obligation for payment after the date of termination, regardless of the terms of the agreement. The state agency shall provide the Contractor thirty (30) calendar day's written notice of termination of the agreement due to lack of available funding.

5.00 Reduction in Contract Worker Hours

The Kentucky General Assembly may allow for a reduction in contract worker hours in conjunction with a budget balancing measure for some professional and non-professional 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

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the purpose of financial audit or program review. The Contractor also recognizes that any books, documents, papers, records, or other evidence, received during a financial audit or program review shall be subject to the Kentucky Open Records Act, KRS 61.870 to 61.884. Records and other prequalification information confidentially disclosed as part of the bid process shall not be deemed as directly pertinent to the agreement and shall be exempt from disclosure as provided in KRS 61.878(1)(c).

7.00 Violation of tax and employment laws

KRS 45A.485 requires the Contractor and all subcontractors performing work under the contract to reveal to the Commonwealth any final determination of a violation by the Contractor within the previous five (5) year period of the provisions of KRS chapters 136, 139, 141, 337, 338, 341, and 342. These statutes relate to corporate and utility tax, sales and use tax, income tax, wages and hours laws, occupational safety and health laws, unemployment insurance laws, and workers compensation insurance laws, respectively. Disclosure of any violations is required prior to the award of any state contract and throughout the duration the contract.

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

To comply with KRS 45A.485, the Contractor and all subcontractors performing work under this contract shall report any such final determination(s) of any violation(s) within the previous five (5) years to the Commonwealth by providing a list of the following information regarding any violation(s): (1) specific KRS violated, (2) date of any final determination of a violation, and (3) state agency which issued the final determination.

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

8.00 Discrimination

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

The Contractor will not discriminate against any employee or applicant for employment because of race, religion, color, national origin, sex, sexual orientation, gender identity or age. The Contractor further agrees to comply with the provisions of the Americans with Disabilities Act (ADA), Public Law 101-336, and applicable federal regulations relating thereto prohibiting discrimination against otherwise qualified disabled individuals under any program or activity. The Contractor agrees to provide, upon request, needed reasonable accommodations. The Contractor will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability. Such action shall include, but not be limited to the following; employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensations; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices setting forth the provisions of this non-discrimination clause.

In all solicitations or advertisements for employees placed by or on behalf of the Contractor, the Contractor will, state that all qualified applicants will receive consideration for employment

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without regard to race, religion, color, national origin, sex, sexual orientation, gender identity, age or disability.

The Contractor will send to each labor union or representative of workers with which he/she has a collective bargaining agreement or other contract or understanding, a notice advising the said labor union or workers' representative of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance.

The Contractor will comply with all provisions of Executive Order No. 11246 of September 24, 1965 as amended, and of the rules, regulations and relevant orders of the Secretary of Labor.

The Contractor will furnish all information and reports required by Executive Order No. 11246 of September 24, 1965, as amended, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records and accounts by the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

In the event of the Contractor's noncompliance with the nondiscrimination clauses of this agreement or with any of the said rules, regulations or orders, this agreement may be cancelled, terminated or suspended in whole or in part and the Contractor may be declared ineligible for further government contracts or federally-assisted construction contracts in accordance with procedures authorized in Executive Order No. 11246 of September 24, 1965, as amended, and such other sanctions may be imposed and remedies invoked as provided in or as otherwise provided by law.

The Contractor will include the provisions of paragraphs (1) through (7) of section 202 of Executive Order 11246 in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor, issued pursuant to section 204 of Executive Order No. 11246 of September 24, 1965, as amended, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions including sanctions for noncompliance; provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the agency, 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.

AGREED TO BY:

**LEXINGTON FAYETTE URBAN COUNTY
GOVERNMENT:**

Linda Gorton, Mayor

Date

DEPT. FOR ENVIRONMENTAL PROTECTION:

Anthony R. Hatton, Commissioner

Date

ENERGY AND ENVIRONMENT CABINET:

Rebecca W. Goodman, Secretary

Date

APPROVED AS TO FORM AND LEGALITY:

EEC, Office of Legal Services

Date

BABA Contract Language

REQUIRED CONTRACT LANGUAGE

Any contracts that may include a project for infrastructure, including subcontracts, shall include the following terms:

Buy America Domestic Procurement Preference:

As required by Section 70914 of the Bipartisan Infrastructure Law (also known as the Infrastructure Investment and Jobs Act), P.L. 117-58, on or after May 14, 2022, none of the funds under a federal award that are part of Federal financial assistance program for infrastructure may be obligated for a project unless all of the iron, steel, manufactured products, and construction materials used in the project are produced in the United States, unless subject to an approved waiver. The requirements of this section must be included in all subawards, including all contracts and purchase orders for work or products under this program.

Recipients of an award of Federal financial assistance are hereby notified that none of the funds provided under this award may be used for a project for infrastructure unless:

1. all iron and steel used in the project are produced in the United States—this means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
2. all manufactured products used in the project are produced in the United States—this means the manufactured product was manufactured in the United States; and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard that meets or exceeds this standard has been established under applicable law or regulation for determining the minimum amount of domestic content of the manufactured product; and
3. all construction materials are manufactured in the United States—this means that all manufacturing processes for the construction material occurred in the United States.

The Buy America preference only applies to articles, materials, and supplies that are consumed in, incorporated into, or affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies, such as temporary scaffolding, brought to the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America preference apply to equipment and furnishings, such as movable chairs, desks, and portable computer equipment, that are used at or within the finished infrastructure project, but are not an integral part of the structure or permanently affixed to the infrastructure project.

For further information on the Buy America preference, please visit the specific Federal funding agencies BABA website. Additional information can also be found at the White House Made in America Office website: www.whitehouse.gov/omb/management/made-in-america/.

Waivers

When necessary, recipients may apply for, and the Federal funding agency may grant, a waiver from these requirements, subject to review by the Made in America Office. The Federal funding agency may waive the application of the domestic content procurement preference in any case in which it is determined that one of the below circumstances applies:

1. Non-availability Waiver: the types of iron, steel, manufactured products, or construction materials are not produced in the United States in sufficient and reasonably available quantities or of a satisfactory quality;
2. Unreasonable Cost Waiver: the inclusion of iron, steel, manufactured products, or construction materials produced in the United States will increase the cost of the overall project by more than 25 percent; or
3. Public Interest Waiver: applying the domestic content procurement preference would be inconsistent with the public interest.

There may be instances where an award qualifies, in whole or in part, for an existing general applicability waiver. If the specific financial assistance agreement, infrastructure project, or non-domestic materials meets the criteria of an existing general applicability waiver within the limitations defined within the waiver, the recipient is not required to request a separate waiver for non-domestic materials.

If a general applicability waiver does not already apply, and a recipient believes that one of the above circumstances applies to an award, a request to waive the application of the domestic content procurement preference may be submitted to the financial assistance awarding officer in writing. Waiver requests shall include the below information. The waiver shall not include any Privacy Act information, sensitive data, or proprietary information within their waiver request. Waiver requests will be posted to the specific Federal funding agencies website and are subject to public comment periods of no less than 15 days. Waiver requests will also be reviewed by the Made in America Office.

1. Waiver type (public interest, non-availability, or unreasonable cost).
 2. Recipient or subrecipient name and Unique Entity Identifier (UEI).
 3. Federal agency who issued the award.
 4. Federal financial assistance listing name and number.
 5. Federal financial assistance title of project.
 6. Federal Award Identification Number (FAIN).
 7. Federal financial assistance funding amount.
 8. Total estimated infrastructure expenditures, including all Federal and non-federal funds (to the extent known).
 9. Infrastructure project description(s) and location(s) (to the extent known).
 10. List of iron or steel item(s), manufactured goods, and construction material(s) the recipient seeks to waive from Buy America preference requirements. Include the name, cost, countries of origin (if known), and relevant [PSC](#) or [NAICS](#) code for each.
 11. A certification that the recipient made a good faith effort to solicit bids for domestic products supported by terms included in requests for proposals, contracts, and nonproprietary communications with the prime contractor.
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12. A statement of waiver justification, including a description of efforts made (e.g., market research, industry outreach) by the recipient, in an attempt to avoid the need for a waiver. Such a justification may cite, if applicable, the absence of any Buy America-compliant bids received in response to a solicitation.
13. Anticipated impact if no waiver is issued.

Approved waivers will be posted on the Federal funding agencies waivers website; recipients requesting a waiver will be notified of their waiver request determination by an awarding officer.

Questions pertaining to waivers should be directed to the financial assistance awarding officer.

Definitions

“Construction materials” includes an article, material, or supply that consists of only one of these items:

- Non-ferrous metals;
- Plastic and polymer-based products (including polyvinylchloride, composite building materials, and polymers used in fiber optic cables);
- Glass (including optic glass);
- Fiber optic cable (including drop cable);
- Optical fiber;
- Lumber;
- Engineered wood; and
- Drywall.

“Construction Materials” does **not** include cement and cementitious materials, aggregates such as stone, sand, or gravel, or aggregate binding agents or additives.

“Domestic content procurement preference” means all iron and steel used in the project are produced in the United States; the manufactured products used in the project are produced in the United States; or the construction materials used in the project are produced in the United States.

“Infrastructure” includes, at a minimum, the structures, facilities, and equipment for, in the United States, roads, highways, and bridges; public transportation; dams, ports, harbors, and other maritime facilities; intercity passenger and freight railroads; freight and intermodal facilities; airports; water systems, including drinking water and wastewater systems; electrical transmission facilities and systems; utilities; broadband infrastructure; and buildings and real property. Infrastructure includes facilities that generate, transport, and distribute energy.

“Project” means the construction, alteration, maintenance, or repair of infrastructure in the United States.

Contractors and subcontractors must submit the “EEC-003 – Contractor Certificate of Compliance with Build America, Buy America Provisions for Federally Assisted Contracts” form, to the awarding entity. Contractors and subcontractors certify that no federal financial assistance funding for infrastructure projects will be provided unless all the iron, steel, manufactured projects, and construction materials used in the project are produced in the United States. Contractors and subcontractors shall also disclose any use of federal financial assistance for infrastructure projects that do not ensure compliance with BABA domestic preference requirement. Such disclosures shall be forwarded to the awarding entity who in turn will forward the disclosures to the Federal funding agency.”



**SUBRECIPIENT REPORT OF COMPLIANCE
WITH BUILD AMERICA, BUY AMERICA PROVISIONS
FOR FEDERALLY ASSISTED CONTRACTS**

This form is to be submitted with each request for reimbursement of funding by the subrecipient and as requested by the Energy and Environment Cabinet during the project.

SUBRECIPIENT NAME			
CONTRACT NUMBER			
PROJECT DESCRIPTION			
BILLING PERIOD		TO	

Subrecipient Statement:

I confirm to the best of my knowledge and belief that we are in compliance with the requirements of Pub. L. No. 117-58, §§ 70901-27 as referenced in the following requirements of the Build America, Buy America (BABA) Act and the grant agreement between the Federal funding agency and the Commonwealth of Kentucky.

Signature (*Subrecipient Representative*)

Title

Date

The Build America, Buy America Act, enacted under Division G, Title IX of the Infrastructure Investment and Jobs Act (IIJA), applies a domestic content procurement preference requirement (Buy America Requirement) to federally funded public “infrastructure projects.” Per Section 70914 of the IIJA funds may not be obligated for an “infrastructure project” unless all of the iron and steel, manufactured products, and construction materials used in the project was produced in the United States or an applicable a waiver to the domestic content procurement preference requirement is used.

Subrecipient Responsibility

The subrecipient is responsible for ensuring the Buy America Requirement flows down to all contracts, subcontracts, and purchase orders for work performed under the proposed infrastructure project. Subrecipients of awards containing the Buy America Requirement must ensure that absent a waiver none of the funds provided under their award may be used for a project for infrastructure unless:

1. All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
2. All manufactured products used in the project are produced in the United States. This means the manufactured product was manufactured in the United States, and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard that meets or exceeds this standard has been established under applicable law or regulation for determining the minimum amount of domestic content of the manufactured product; and
3. All construction materials are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.



The Buy America Requirement only applies to articles, materials, and supplies that are consumed in, incorporated into, or permanently affixed to an infrastructure project. As such, it does not apply to tools, equipment, and supplies brought into the construction site and removed at or before the completion of the infrastructure project. Nor does a Buy America Requirement apply to equipment and furnishings that are used at or within the finished infrastructure project but are not an integral part of the structure or permanently affixed to the infrastructure project.

Compliance Verification

Buy America requirements must flow down to all contracts, subcontracts and purchase orders for work performed under the infrastructure project; therefore, subrecipients must maintain certifications or equivalent documentation for proof of compliance that those articles, materials, and supplies that are consumed in, incorporated into, affixed to, or otherwise used in the infrastructure project, not covered by a waiver or exemption, are produced in the United States.

The Certificate of Compliance form (Form EEC-003) must be provided by contractor and subcontractors from the suppliers or manufacturers of the iron and steel, manufactured products, and construction materials and flow up from all contractors and subcontractors to the subrecipient.

Subrecipients must keep these certifications with the award/project files and be able to produce upon request from the Federal funding agency, Energy and Environment Cabinet, auditors or Office of Inspector General. Copies of the Certificate of Compliance form (Form EEC-003) may be requested from the Energy and Environment Cabinet.



**CONTRACTOR CERTIFICATE OF COMPLIANCE
WITH BUILD AMERICA, BUY AMERICA PROVISIONS
FOR FEDERALLY ASSISTED CONTRACTS**

Prime Contractors and subcontractors should complete and sign a copy of this form and submit with each payment request to the Energy and Environment Cabinet (EEC). Prime contractors must also attach receipts and/or other documentation with this form showing evidence of Buy America compliance.

CONTRACTOR NAME			
CONTRACTOR ADDRESS			
PROJECT NAME			
INVOICE PERIOD		TO	
CONTRACT NUMBER			
CONTRACT AMOUNT			

This certification is to be utilized by prime contractors and subcontractors who have been awarded contracts funded through the Energy and Environment Cabinet and subject to the Buy America provisions of the Infrastructure Investment and Jobs Act (Pub. L. No 117-27). Buy America provisions state:

- (1) All iron and steel used in the project are produced in the United States. This means all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States;
- (2) All manufactured products used in the project are produced in the United States. This means the manufactured product was manufactured in the United States, and the cost of the components of the manufactured product that are mined, produced, or manufactured in the United States is greater than 55 percent of the total cost of all components of the manufactured product, unless another standard that meets or exceeds this standard has been established under applicable law or regulation for determining the minimum amount of domestic content of the manufactured product; and
- (3) All construction materials are manufactured in the United States. This means that all manufacturing processes for the construction material occurred in the United States.

MATERIALS/MANUFACTURED GOOD(S) BEING USED FOR PROJECT (Please List)

TYPE OF GOOD	MAKE & MODEL	MANUFACTURING LOCATION



CERTIFICATE OF COMPLIANCE WITH BUY AMERICA

I hereby certify that all of the iron and steel, manufactured products, and construction materials supplied or provided by our company for use on this project was manufactured in the United State of America, unless an applicable waiver applies.

or

I am relying on the following Buy America waiver(s) (check all that apply):

De Minimis Waiver
Iron and steel, manufactured products, and construction materials supplied/provided by our company equal no more than 5 percent of the total applicable project costs of the iron and steel, manufactured products, and construction materials used in and incorporated into this project.

Small Grants Waiver
The total award amount does not exceed the Simplified Acquisition Threshold of currently \$250,000.00 and is not anticipated to exceed the Simplified Acquisition Threshold for the life of the award and is not subject to the provisions of Buy America.

Representative Name

Title

Representative Signature

Date