

## GRANT AWARD AGREEMENT

### *Fiscal Year 2023 Class B Infrastructure Incentive Grant Program*

THIS AGREEMENT, made and entered into on the 28<sup>th</sup> day of March, 2023, by and between the **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT (LFUCG)**, an urban county government of the Commonwealth of Kentucky, pursuant to KRS Chapter 67A (hereinafter "Government"), on behalf of its Division of Water Quality, and **WINDSWEPT VENTURES, LLC**, 229 SHADY LANE, LEXINGTON, KENTUCKY 40503 (hereinafter "Grantee" & "Property Owner").

### WITNESSETH:

**WHEREAS**, the Grantee is a documented fee-payer of the Government's Water Quality Management Fee; and

**WHEREAS**, the Grantee has proposed a need for the funds requested to develop and implement a proposed project by submitting a valid grant application; and

**WHEREAS**, the Grantee's grant application has been reviewed and selected for funding by the Water Quality Fees Board in accordance with Sections 16-408 and 16-410 of the Government's Code of Ordinances; and

**WHEREAS**, the Government has funds available through the Stormwater Quality Projects Incentive Grant Program to assist the qualified Grantee in the development and implementation of projects that meet the goals of the program; and

**WHEREAS**, the Grantee desires to implement a specific project that meets one or more Incentive Grant program goals to improve water quality, reduce stormwater runoff, and provide public or private education related to stormwater quality; and

**WHEREAS**, any such improvements funded by the Government shall benefit the public through installed improvements and/or educational programming;

**THAT FOR AND IN CONSIDERATION OF THE MUTUAL PROMISES AND COVENANTS HEREIN EXPRESSED, GOVERNMENT AND GRANTEE AGREE AS FOLLOWS:**

- (1) The Government hereby grants the Grantee the sum of **\$316,564.80** (hereinafter "the Grant"), for use in implementing the project elements as listed in Attachment A which is incorporated herein by reference as if fully set out herein. The Grantee agrees to cost share the Grant with contributions, labor, and/or other services equal to or greater than 20% of the total project cost.
- (2) The Grantee agrees to use the Grant only for the activities set forth in Attachment A which includes installation of stormwater control infrastructure at the following site location(s): **729 BELLAIRE AVENUE, LEXINGTON, KENTUCKY 40508** currently owned by the Property Owner.
- (3) The Grantee agrees to meet all design standards specified in the Government's Engineering Manuals or as further described in Attachment A in the design of all Grant-funded improvements. This includes all associated activities including but not limited to erosion and sediment control, traffic control, utility relocations, seeding, etc. The Grantee further agrees to design the facilities in such a way as not to preclude the potential for future water quality / quantity monitoring by LFUCG.

- (4) The Grantee agrees to comply with all applicable local, state, and federal rules, regulations, ordinances, and laws in implementation of the project.
- (5) The Grantee agrees to obtain all necessary local, state, and federal permits, encroachments, permissions, approvals, etc. in a timely manner and prior to start of construction.
- (6) The Grantee agrees to perform periodic reporting as detailed in Paragraph (7) herein below, and produce a Project Final Report within thirty (30) calendar days of the completion of the project elements in digital and hard copy following a standardized format to be provided by the Government summarizing all work completed and detailing the total grant expenditures. Other deliverables include the following:
  - (a) At the end of the Feasibility Phase (if applicable), the following five deliverables, sealed by a professional licensed to perform such work in accordance with Kentucky Revised Statutes (KRS), shall be provided:
    - Feasibility report evaluating the use of the potential BMP(s) on the proposed site;
    - Conceptual design concept;
    - Detailed cost estimate for design;
    - Conceptual cost estimate for construction;
    - Letter certifying all BMPs proposed for design as viable and feasible for the specific site and application.
  - (b) At the end of the Design Phase or prior to the start of the Construction Phase, the following six deliverables, sealed by a professional licensed to perform such work in accordance with Kentucky Revised Statutes (KRS), shall be provided:
    - Set of all final design calculations;
    - Set of final construction plans, including traffic control, erosion and sediment control, grading plans, etc.;
    - Set of final specifications and bidding documents (if applicable);
    - Final detailed engineer's construction cost estimate including quantities;
    - All required permit submittals and approvals;
    - Inspection, Operation, and Maintenance Plan laying out the plan for regular inspection and maintenance of each proposed facility for design performance and safety in accordance with manufacturer's specifications and the Government's Stormwater Manual.
  - (c) At the end of the Construction Phase, the following five deliverables shall be provided:
    - Summary of final construction costs and quantities;
    - Copies of all federal, state, and local permits obtained for the project;
    - Record Drawing showing all field changes, and signed and sealed by the professional of record certifying the project as shown meets all original design intent;
    - Photo documentation of site conditions and improvements before, during, and after construction;
    - Signed *Agreement to Maintain Stormwater Control Facilities Funded by an LFUCG Class B Infrastructure Stormwater Quality Projects Incentive Grant*.
- (7) The Grant to the Grantee shall be disbursed in the following manner:
  - (a) The Grantee shall submit at least once every three (3) months, if not specified otherwise in Attachment A, a Request for Funds to the Government's Grant Manager designated by the Director of the Division of Water Quality for the project. Each Request for Funds shall include documentation that the Grantee has already expended the requested funds or shall be in a position to expend properly the requested funds within thirty (30) days of receipt of the funds. The Request for Funds shall include full accounting of these eligible grant-related expenses, as listed in Attachment A. Copies of invoices, purchase orders, or receipts showing vendor, date, amount, and items purchased or ordered shall be provided with the Request for Funds. For project specific personnel costs and stipends, documentation of all billed hours shall include copies of

employee timesheets, hourly payroll rate, and description of work performed for hours billed. Each Request for Funds shall include a minimum of 10% cost share.

- (b) Each Request for Funds shall be accompanied by a Project Status Report describing the progress of the project to date, including a description and schedule of all activities completed, and hardcopy or electronic copies of materials (*e.g.*, calculations, preliminary plans, etc.) completed to date. For educational events (if applicable), copies of the class rosters or sign-in sheets documenting the number of attendees shall be provided.
  - (c) The Government's Grant Manager shall review each Request for Funds and supporting documents for compliance with the terms of this Agreement and the guidelines of the Stormwater Quality Projects Incentive Grant Program. If the Grant Manager finds the Grantee's Request for Funds is in compliance with the terms of this Agreement and the guidelines of the Stormwater Quality Projects Incentive Grant Program and that the activity progress and management program of the Grantee satisfy the terms of the grant award, he or she shall approve the Request for Funds within 15 calendar days of receipt and then forward it to the Division of Accounting for payment.
  - (d) The Government shall release payment of the final 10% of the Grant only after receipt and acceptance of the Project Final Report. The Government's Grant Manager shall review the Project Final Report and provide comments to the Grantee or, if acceptable, forward approval within 15 calendar days of receipt to the Division of Accounting for payment.
  - (e) Should the Government's Incentive Grant Program Administrator determine that the Grantee is not in compliance with the terms of this Agreement and/or the Stormwater Quality Projects Incentive Grant Program, including deficiencies in progress and management of the project, the Division of Water Quality shall notify the Grantee, the Mayor's Office, and the appropriate district Council person, and shall meet with the Grantee on matters that prevent approval of the Request for Funds. Failure to resolve any such matters to the satisfaction of the Government may lead to termination of the Agreement for cause pursuant to Paragraph (21) herein below.
- (8) The Grantee agrees to obtain written approval from the Government's Grant Manager or Program Administrator for any proposed changes to the Project Team or Project Plan as listed in Attachment A prior to implementing the changes. Failure to gain written approval prior to making changes may lead to termination of the Agreement for cause pursuant to Paragraph (21) herein below.
  - (9) The Grantee agrees to complete the project phase(s) (*i.e.*, Design and/or Construction) outlined herein within **24** months from the date of this Agreement. The Grantee shall obtain written approval from the Government's Grant Manager or Program Administrator for any time extensions beyond the schedule. Failure to obtain written approval prior to making changes may lead to termination of the Agreement for cause pursuant to Paragraph (21) herein below.
  - (10) This Agreement may not be modified except by written agreement of the Government and the Grantee.
  - (11) The Grantee understands that the Grant amount shown herein in Paragraph (1) is a not-to-exceed amount, and any additional funding needed to complete the project elements listed in Attachment A is the responsibility of the Grantee. If it becomes apparent to the Grantee or the Government that the Grantee will be unable to complete the project either in the manner or for the amount described in this Agreement, then the Grantee must immediately notify the Government's Grant Manager and Program Administrator by providing a complete and detailed written explanation of its inability to comply with the terms of the Agreement. The Grantee must further provide the Government's Grant Manager and Program Administrator with a complete and detailed written explanation of any proposed changes, and the reasons for those changes.

- (12) The Grantee asserts that it is in full compliance with all applicable provisions of the Lexington-Fayette Urban County Government's Code of Ordinances Chapter 5 – Buildings and Building Regulations, Chapter 7 – Finance and Taxation, Chapter 12 – Housing, and Chapter 16 – Sewage, Garbage, Refuse, and Weeds, or in compliance with Kentucky Department of Housing Buildings and Construction rules and requirements as is appropriate for those state institutions, parcels, or buildings which are subject to state regulations and oversight as opposed to local ordinances and regulations. If the Grantee becomes out of compliance with any of these provisions, it will notify the Government's Grant Manager and Program Administrator immediately. Failure to notify the Government and resolve any such matters to the satisfaction of the Government may lead to termination of the Agreement for cause pursuant to Paragraph (21) herein below.
- (13) The Grantee agrees to allow the Government access to its property to perform monitoring of the project elements for compliance with this Agreement, as provided in the "*Agreement to Maintain Stormwater Control Facilities Funded by an LFUCG Class B Infrastructure Stormwater Quality Projects Incentive Grant*" (Attachment B).
- (14) In any advertisement of the project funded by the Grant, whether written or oral communications, the Grantee agrees to identify the Lexington-Fayette Urban County Government as the source of the above referenced funds; the Grantee shall not specifically identify any individual or elected official as being responsible for the funds donated by the Government.
- (15) The Grantee agrees to allow the Government to publicize the Grantee's project through the Government's website and other media.
- (16) The Grantee agrees to reference the Lexington-Fayette Urban County Government's Water Quality Management Fee and the Stormwater Quality Projects Incentive Grant Program as a source of funding for the project on any permanent signage or educational brochures, presentations, websites, etc. produced using grant monies.
- (17) The Grantee agrees that the Government is authorized to erect and maintain permanent signage at the location of any permanent capital infrastructure, referencing the Water Quality Management Fee and the Stormwater Quality Projects Incentive Grant Program as a source of funding for such permanent capital infrastructure. In the event that permanent signage is installed by the Government, such signage shall not be removed except upon written approval by the Government. Provided, however, that nothing herein shall require the installation of signage by the Government nor prohibit the Government from removing any signage so installed.
- (18) The Grantee and Property Owner agree that all stormwater control facilities, including equipment and infrastructure, constructed and funded by a Construction Grant through the Stormwater Quality Projects Incentive Grant Program shall remain in service and maintained by the Grantee or its representatives following the Inspection, Operation, and Maintenance Plan developed for each facility referenced in (6b) above. The Property Owner further accepts and agrees to enter into the "*Agreement to Maintain Stormwater Control Facilities Funded by an LFUCG Class B Infrastructure Stormwater Quality Projects Incentive Grant*" attached hereto as Attachment B and which is incorporated herein by reference as if fully set out herein.
- (19) The Grantee and Property Owner agree that all stormwater control facilities, including equipment and infrastructure, constructed and funded by this Grant shall remain the property of the current Property Owner, or his successors and assigns, unless otherwise specified in Attachments A and B.
- (20) The Grantee and Property Owner understand that if any of the Grant-funded facilities not owned by the Government are removed from service, the property owner of record at the time of removal shall be liable to reimburse the Government for 100% of the Remaining Value of the facility or portion removed, based upon the depreciation schedule provided in Attachment B.

- (21) If, through any cause, the Grantee or Property Owner shall fail to fulfill in timely and proper manner its obligations under this Agreement, or if the Grantee or Property Owner shall violate any of the covenants, agreements, or stipulations of this Agreement, the Government shall provide the Grantee or Property Owner thirty (30) calendar days to address the deficiency or violation. If the Grantee or Property Owner does not, after the thirty (30) days, come into compliance with this Agreement, the Government shall thereupon have the right to terminate this Agreement by giving written notice to the Grantee of such termination and specifying the effective date thereof, at least five (5) calendar days before the effective date of such termination. In that event, all finished or unfinished documents, receipts, and reports prepared by the Grantee shall, at the option of the Government, become its property and the Grantee shall immediately repay to the Government all monies received pursuant to this Agreement less any amount representing just and equitable compensation for the Government's share of any satisfactory work completed pursuant to the Agreement; provided, however, that for any project involving the construction of capital infrastructure, other than feasibility only projects, the Government's share of any satisfactory work completed shall not include feasibility or design costs.
- (22) The Grantee shall provide equal opportunity in employment as required by applicable federal, state, and local laws, regulations, and ordinances.
- (23) The Grantee is solely responsible for assuring that adequate and appropriate insurance or other necessary coverage is maintained during the term of this Agreement.
- (24) The Grantee's sole remedy for a breach of this Agreement by the Government shall be limited to the amount of the Grant.
- (25) The Government assumes no responsibility whatsoever in the Grantee's project activities. Grantee and Property Owner shall, to the extent allowed by law, defend, indemnify, and hold harmless Government from and against all liability, claims, losses, actions, costs, expenses, obligations, fines, and assessments of whatever kind, including defense costs and 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, in whole or in part, from or by Grantee's or Property Owner's or its contractor(s), agents, or assigns, negligent acts or misconduct, or errors or omissions, in connection with the activities carried out pursuant to this Agreement, the Grant award, or the Stormwater Quality Projects Incentive Grant Program.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement at Lexington, Fayette County, Kentucky, as of the day and year first above written.

LEXINGTON-FAYETTE URBAN COUNTY  
GOVERNMENT

BY: Linda Gorton  
LINDA GORTON, MAYOR

ATTEST:

Mardelma Stoeck  
CLERK, URBAN COUNTY COUNCIL  
*Deputy*

GRANTEE ORGANIZATION & WINDSWEPT VENTURES, LLC  
PROPERTY OWNER: 229 SHADY LANE

LEXINGTON, KENTUCKY 40503

BY: [Signature]  
NAME: JAMES W. MCFARLANE  
TITLE: OWNER

The foregoing Agreement was subscribed, sworn to and acknowledged before me by James W. McFarlane, as the duly authorized representative for and on behalf of Windswept Ventures, LLC, on this the 14<sup>th</sup> day of February, 2023.

My commission expires: 7/21/26

Lou A. Harris  
NOTARY PUBLIC

KYNP 53650

**ATTACHMENT A**  
**to the GRANT AWARD AGREEMENT**  
**between Lexington-Fayette Urban County Government (LFUCG) and**  
**Windswept Ventures, LLC**

**GRANT PROGRAM**

**2023 Stormwater Quality Projects Incentive Grant Program  
Class B Infrastructure Projects**

- Funded through the LFUCG Water Quality Management Fee
- Administered by the LFUCG Division of Water Quality in the Department of Environmental Quality & Public Works

**PROJECT TEAM AND CONTACT INFORMATION**

**Grantee Organization:** Windswept Ventures, LLC  
229 Shady Lane  
Lexington, KY 40508  
KY Organization #0328434



**Primary Project Contact:** James W. McFarlane  
859-229-0510 (phone)  
jwm@unitedlandscape.net (email)

**Secondary Project Contact:** Sue Ellen McFarlane  
859-229-4872 (phone)  
sem@unitedlandscape.net (email)

**Project Manager:** Denise O'Meara  
Earthcycle Design, LLC  
859-229-3125 (phone)  
domeara@ecdsite.com (email)

**Project Site Location(s) &  
Property Owner(s):** Windswept Ventures, LLC  
729 Bellaire Avenue  
Lexington, KY 40508  
PVA #10434300

**Design Professional Firm:** Earthcycle Design, LLC  
3168 Arrowhead Drive  
Lexington, KY 40503  
859-229-3125 (phone)  
Scott Southall, ASLA (Landscape Architect of Record)  
bsouthall@ecdsite.com (email)

**PROJECT PLAN ELEMENTS**

All improvements shall be located on the property at 729 Bellaire Avenue, Lexington, Kentucky 40508, PVA #10434300 owned by Windswept Ventures, LLC. No other property or right-of-way shall be disturbed without written permission from the property owners.

**Project Elements**

This project will implement the FY21 United Landscape Services, Inc., Feasibility Study that identified, evaluated, and selected locations of BMPs (see Figure 3), and cost estimates for construction and future maintenance expenses. The study identified appropriate BMPs for each condition, and phased projects by area (see Figure 2 – BMP Area Diagram Prioritized Area A-E).

A. **BMP Design and Construction** – The FY23 Windswept Ventures, LLC Class B Infrastructure Project focuses on two (2) locations, *Project Areas A* and *B* to design and construct BMPs shown in *Figure 3 – BMP Locations Map* to include the following activities:

*Project Area A:*

- i. Remove temporary ditch along the Office Building foundation and re-place with a new enhanced french drain swale/bioswale.

- ii. *Construct a new doorway awning structure with demonstration vegetated roof and walkway to pass over the new bioswale.*
- iii. *Remove existing gravel area. Connect existing downspouts to the Office Entrance bioswale, leading to the Area B rain garden/infiltration basin.*

*Project Area B*

- i. *Install a rain garden for bioretention.*
- ii. *Add stormwater harvesting container.*
- iii. *Remove stored materials from Area B inside fence at north corner for rain installation of rain garden.*
- iv. *Replace existing gravel parking area with permeable parking pavers to reduce impervious area by removing pavement.*

B. **Stormwater educational** – install interpretive signage along the Legacy Trail to provide an excellent opportunity for the public on sustainable stormwater methods.

**1) STORMWATER CONTROL FACILITIES DESIGN:**

**No grant-funded activities shall occur until the LFUCG Grant Manager gives Notice to Proceed, in writing, for the start of the project.**

Stormwater control facilities shall be designed for the specified site location. The proposed facilities are listed above and are further described in the Organization’s grant application. Alterations to these elements can only be made in consultation with the LFUCG Grant Manager. Significant alteration of these elements may require approval by the LFUCG Water Quality Fees Board.

**Design plans shall be provided to the LFUCG Grant Manager for review prior to starting the construction phase of the project.**

- All existing utilities shall be located and shown on the design plans.
- All existing easements, adjacent property lines, and rights-of-way shall be shown on the design plans. If any work is proposed to occur within any easement (*i.e.*, utility, etc.), whether public or private, the Organization shall obtain all necessary encroachment agreements for the authorized agencies prior to the start of construction.
- Any work proposed within or on public right-of-way, easement, or LFUCG-owned property will require one or more permits or approvals. This includes installation permits for connection into any existing curb inlet or stormwater manhole located within public right-of-way. Please contact the appropriate staff:

Parks and Recreation, Chris Cooperrider – [ccooperrider@lexingtonky.gov](mailto:ccooperrider@lexingtonky.gov)  
 Environmental Services (greenways), Demetria Mehlhorn – [dkimball@lexingtonky.gov](mailto:dkimball@lexingtonky.gov)  
 Environmental Services (street trees), Heather Wilson – [hwilson@lexingtonky.gov](mailto:hwilson@lexingtonky.gov)  
 Engineering (right-of-way), John Cassel – [jcassel@lexingtonky.gov](mailto:jcassel@lexingtonky.gov)  
 Engineering (new development), Hillard Newman – [hnewman@lexingtonky.gov](mailto:hnewman@lexingtonky.gov)  
 Sanitary Sewers, Chris Dent – [cdent@lexingtonky.gov](mailto:cdent@lexingtonky.gov)  
 Stormwater, Mark Sanders– [msanders@lexingtonky.gov](mailto:msanders@lexingtonky.gov)

- All federal, state, and local permits, approvals, and agreements required for construction of the proposed improvements shall be obtained prior to the start of construction. If the timing of construction is such that a permit may expire before construction can be completed, then the Organization shall coordinate with the LFUCG Grant Manager and permitting agencies on appropriate timing for permit submittals. The Organization is fully responsible to determine which approvals, permits, and encroachments are required for the project.
- Erosion and sediment control and traffic control measures shall be designed to meet all standards and follow guidelines in the LFUCG Engineering Manuals, and shall be shown on the design plans with appropriate notes.



## 2) **STORMWATER CONTROL FACILITIES CONSTRUCTION:**

**No grant-funded construction activities shall occur until the LFUCG Grant Manager gives Notice to Proceed, in writing, for the start of the construction phase of the project.**

Facilities shall be constructed per the design plans and specifications. Construction of the proposed facilities shall also meet the following stipulations:

- Construction shall not begin until all permits, approvals, agreements, etc. are obtained and copies provided to the LFUCG Grant Manager.
- All existing utilities shall be located, contacted, and coordinated with prior to any work being performed.
- The Stormwater Pollution Prevention Plan, including the Erosion and Sediment Control Plan, shall be provided to the LFUCG Divisions of Water Quality and Engineering for review. The LFUCG Land Disturbance Permit shall be obtained by the contractor after placement of the ESC and traffic control measures.
- Failure to place acceptable erosion and sediment control measures into service prior to start of construction will result in shut-down of the job site until the measures are put in place. Construction practices shall be put in place to prevent the illicit discharge of sediment, dirt, sand, fluids, trash, and any other pollutant into the Municipal Separate Storm Sewer System or Waters of the Commonwealth.
- The Organization shall host a pre-construction meeting with all parties related to the Stormwater Control Facilities. The LFUCG Grant Manager shall be invited and provided five (5) days advanced notice of this meeting.
- The Organization is responsible for providing all construction oversight, administration, and daily inspections. LFUCG shall not provide these services.
- The Organization shall document construction by taking before, during, and after photographs. Photographs shall be provided in digital format to the LFUCG Grant Manager.
- Once construction of the Stormwater Control Facilities is complete, a final punch-list inspection shall be performed. The LFUCG Grant Manager shall be invited to this inspection and provided five (5) days advanced notice. If punch-list items are identified, a second inspection shall be performed once those items are resolved, and the LFUCG Grant Manager shall be invited to this inspection and provided three (3) days advanced notice.
- The Organization agrees to enter into the *Agreement to Maintain Stormwater Control Facilities Funded by an LFUCG Class B Infrastructure Stormwater Quality Projects Incentive Grant* included in Attachment B of the Grant Award Agreement within twenty-one (21) calendar days of the final (post punch-list) inspection. This Agreement shall be recorded by LFUCG at the Fayette County Clerk's office.

### **REPORTING REQUIREMENTS**

1. Prior to construction, the Organization shall provide the LFUCG Grant Manager three (3) hard copies and one (1) digital copy each of the following deliverables, each sealed by a professional licensed to perform such work in accordance with Kentucky Revised Statutes (KRS):
  - Set of all final design calculations
  - Set of final construction plans, including erosion and sediment control plans, grading plans, etc. (including one "half-size" set)
  - Set of final specifications and bidding documents (if applicable)
  - Final detailed engineer's construction cost estimate including quantities, and/or bid(s)
  - All local, state, or federal permits, approvals, public or private encroachment agreements, etc. received to date for the project

- Inspection, Operation, and Maintenance (IOM) Plan laying out the plan for regular inspection and maintenance of each proposed facility for design performance and safety in accordance with manufacturer's specifications and LFUCG's Stormwater Manual
  - Existing condition photographs
2. The Organization shall allow LFUCG twenty-one (21) calendar days to review the submittals and provide comments. If revised submittals are required, the Organization shall allow LFUCG ten (10) calendar days for review per submittal. LFUCG may choose to have a third party engineering consultant assist LFUCG in review of these submittals.
  3. If the project is competitively bid, the selected contractor's unit price contract / bid list shall be provided to the LFUCG Grant Manager prior to the start of construction.
  4. If the project is not competitively bid, the selected contractor's unit price contract shall be provided to the LFUCG Grant Manager prior to the start of construction, along with a justification for any deviations from the engineer's construction cost estimate.
  5. **The construction phase shall begin only after the LFUCG Grant Manager gives Notice to Proceed, in writing, for the start of the construction phase of the project.**
  6. If, during construction, the contractor requests a deviation or addition to the quantities or costs in the construction contract, the LFUCG Grant Manager shall be notified within two (2) business days. Additions or modifications to the project that are not directly related to the intended and correct function of the stormwater control project elements as described in the Project Elements listed above and in the original incentive grant application are not eligible for Grant reimbursement. Therefore, the Organization is advised that it should coordinate closely with the LFUCG Grant Manager during construction to ensure the work being performed is in compliance with this Agreement. **Note that per the Grant Award Agreement all overruns that result in the project costs exceeding the Grant amount are the responsibility of the Organization.**
  7. After construction is completed, the Project Final Report shall include digital and hard copies of the following:
    - Summary of final construction costs and quantities
    - Copies of all federal, state, and local permits obtained for the project (if not previously provided) and any permit closure documents
    - Three (3) copies of a Record Drawing showing all field changes, and signed and sealed by the professional of record certifying the project as shown meets all original design intent
    - Copies of final inspection minutes, punch-lists, etc.
    - Photo documentation of site conditions and improvements before, during, and after construction
    - Signed *Agreement to Maintain Stormwater Control Facilities Funded by an LFUCG Class B Infrastructure Stormwater Quality Projects Incentive Grant* (Note: This form will be provided by LFUCG after construction is completed and final costs determined.) and the final copy of the IOM Plan, per the Design Reporting Requirements.
    - Any materials generated, including those for educational purposes
  8. LFUCG shall make final payment of the 10% retainer after acceptance of the Project Final Report.
  9. All attachments to Requests for Funds & Project Status Reports shall reference the associated line Table 2 – Eligible Expenses.

### **PERMANENT FACILITIES / INFRASTRUCTURE**

**Ownership:** The proposed facilities are expected to reside on private property in Fayette County and be owned by the Property Owner.

**Future Inspection and Maintenance:** The Organization (and/or Property Owner) agrees to sign and abide by the terms of the *Maintenance Agreement for Stormwater Control Facilities Funded by an LFUCG Class B Infrastructure Stormwater Quality Projects Incentive Grant* included as Attachment B to the Grant Award Agreement. The property owner is solely responsible for future maintenance of the grant-funded improvements as long as the improvements are in service.

**Monitoring by LFUCG:** The Organization agrees to allow LFUCG staff future access to any property on which work is performed to monitor the installed features for compliance with this Agreement during the grant period. After the grant period has ended, the Organization (and/or Property Owner) agrees to allow LFUCG access for monitoring per the terms of the Maintenance Agreement. Water quality sampling via grab samples or other methods may be employed by LFUCG staff as part of its Kentucky Pollutant Discharge Elimination System (KPDES) MS4 Phase 1 Permit.

### **EQUIPMENT**

Any equipment purchased with the Grant shall remain the property of the Organization.

### **ADDITIONAL GRANT STIPULATIONS**

Note the following additional stipulations related to this project:

1. Applicant shall obtain written approval/agreement prior to work being done on properties not owned by the Applicant.
2. Permeable pavement shall not be installed within 10' either side of an existing sanitary sewer and measures taken to prevent infiltrating water from entering into the sanitary sewer stone trench.
3. An Inspection, Operations, and Maintenance (IOM) Plan shall be provided at the conclusion of the project. The IOM Plan shall preclude storage of certain materials on the permeable pavement
4. BMP locations to be modified to comply with the minimum setback distances stipulated in the Engineering Manuals, Codes, Regulations, and Ordinances.
5. Because of modifications to the parking areas, applicant will need to work with LFUCG Division of Planning to verify the regulatory requirements.
6. If underground detention is provided, property owner will be required to conform to LFUCG Code of Ordinances Chapter 16, Article X, Division 2.
7. Applicant to notify the Royal Springs Aquifer/Wellhead Protection Committee prior to work being done on the property.
8. Tree removal and planting activities shall be reviewed and approved by Division of Environmental Services Urban Forester and/or Arborist prior to any tree removal or planting activities.
10. Plantings shall be selected from the Lexington-Fayette Urban County Government's (LFUCG) Rain Garden Manual.
11. Since the budget does not include costs for an underdrain system, Applicant must provide results from soil testing to verify soil infiltration rates, per the LFUCG Stormwater Manual.

### **GRANT PERIOD & PROJECT SCHEDULE**

The grant period starts on the date of execution by the Mayor and extends for the time period as listed in the Grant Award Agreement. Any time extensions must be approved in writing by the LFUCG Grant Manager. The project schedule shown in Table 1 is preliminary. Proposed changes to the project which alter this schedule significantly shall be discussed with the LFUCG Grant Manager prior to implementation.

**TABLE 1 – PRELIMINARY PROJECT SCHEDULE**

Activity	Anticipated Date(s)
Approval Grant Award Agreement and Notice to Proceed (NTP)	March 2023
Kick-off with LFUCG	April 2023
Construction documentation	May 2023 – June 2023
Design Documents	June 2023 – August 2023
Construction documentation	August 2023
Permitting	August 2023 – October 2023
Bidding / Contract Negotiation & Award	November 2023 – December 2023
Construction, punch list and completion	January 2024 – August 2024
Project Closeout / Final Report to LFUCG	August 2024

**PROJECT BUDGET – GRANT ELIGIBLE EXPENSES**

The total project cost estimate and breakdown of grant to cost share is as follows:

Total Grant Share	\$ 316,564.80 (not-to-exceed)
Estimated Cost Share	<u>\$ 79,141.20</u>
<b>Est. Total Project Cost</b>	<b>\$ 395,706.00</b>

Table 2 lists the eligible expenses for this project. Only properly invoiced items shall be reimbursed with grant monies or counted toward the Organization’s cost share.

Any work performed on this project prior to grant award by the Urban County Council and Notice to Proceed from the LFUCG Grant Administrator is NOT an eligible expense and shall not be reimbursed or counted toward the cost share.

Construction cost items given in Table 2 are conceptual and the construction estimate will be revised and submitted to the LFUCG Grant Manager for review prior to construction and again once bids are received. **The Grant is a not-to-exceed amount, and any cost overruns are the responsibility of the Grantee.** Note that the Grant shall not be used to fund any project element that is required by local, state, or federal regulation in relation to any new development or redevelopment associated with the stormwater quality improvement project as described herein. Donated professional service hours shall be valued at the Median Hourly Wage for the service provided as published by the U.S. Department of Labor, Bureau of Labor Statistics, State Occupational Employment and Wage Estimates for Kentucky (current website: [http://www.bls.gov/oes/current/oes\\_ky.htm](http://www.bls.gov/oes/current/oes_ky.htm)).

**TABLE 2 – ELIGIBLE EXPENSES**

	Type of Expense	Participants	Item	Unit Price	Quantity	Funded by Organization	Funded by Grant	Total Expense	
1	<b>Design</b>								
2	Design - Site/Civil Related Services	Consultant	Grant / Project Administration	\$ 13,240.00	LS	1.0	\$ 2,648.00	\$ 10,592.00	\$ 13,240.00
3	Design - Site/Civil Related Services	Consultant	Topographic Survey	\$ 4,220.00	LS	1.0	\$ 844.00	\$ 3,376.00	\$ 4,220.00
4	Design - Site/Civil Related Services	Consultant	Contract Documents	\$ 40,730.00	LS	1.0	\$ 8,146.00	\$ 32,584.00	\$ 40,730.00
5	Design - Site/Civil Related Services	Consultant	Bidding / Contract Negotiations & CA	\$ 10,560.00	LS	1.0	\$ 2,112.00	\$ 8,448.00	\$ 10,560.00
6	<b>Construction</b>								
7	Construction	Contractor	General Conditions	\$ 7,500.00	LS	1.0	\$ 1,500.00	\$ 6,000.00	\$ 7,500.00
8	Construction	Contractor	Erosion & Sediment Control Measures	\$ 3,500.00	LS	1.0	\$ 700.00	\$ 2,800.00	\$ 3,500.00
9	Construction	Contractor	Construction Staking	\$ 3,500.00	LS	1.0	\$ 700.00	\$ 2,800.00	\$ 3,500.00
10	Construction (Demolition)	Contractor	Demolition - Excavation	\$ 22,000.00	LS	1.0	\$ 4,400.00	\$ 17,600.00	\$ 22,000.00
11	Construction (Improvements - Materials)	Contractor	Materials - Concrete (Misc.)	\$ 22,000.00	LS	1.0	\$ 4,400.00	\$ 17,600.00	\$ 22,000.00
12	Construction (Improvements)	Contractor	Materials - #57 stone (18")	\$ 50.00	TN	225.0	\$ 2,250.00	\$ 9,000.00	\$ 11,250.00
13	Construction (Improvements)	Contractor	Materials - Permeable Concrete Pavers	\$ 35.00	SF	1,200.0	\$ 8,400.00	\$ 33,600.00	\$ 42,000.00
14	Construction (Improvements)	Contractor	French Drain	\$ 35.00	LF	200.0	\$ 1,400.00	\$ 5,600.00	\$ 7,000.00
15	Construction (Improvements)	Contractor	Vegetative Awning @ Entrance (8'x10')	\$ 80.00	SF	175.0	\$ 2,800.00	\$ 11,200.00	\$ 14,000.00
16	Construction (Improvements)	Contractor	Materials - anti-seep collar	\$ 400.00	EA	2.0	\$ 160.00	\$ 640.00	\$ 800.00
17	Construction (Improvements)	Contractor	Materials - Non-woven Geotextile - Type IV	\$ 15.00	SY	450.0	\$ 1,350.00	\$ 5,400.00	\$ 6,750.00
18	Construction (Improvements)	Contractor	Materials - Bespoke Splash Block Concrete (salsabil)	\$ 5,500.00	EA	3.0	\$ 3,300.00	\$ 13,200.00	\$ 16,500.00
19	Construction (Improvements)	Contractor	Materials - Concrete Pavement (heavy duty)	\$ 12.50	SF	2,600.0	\$ 6,500.00	\$ 26,000.00	\$ 32,500.00
20	Construction (Improvements)	Contractor	Materials - 6" N-12 HOPE Pipe	\$ 35.00	LF	450.0	\$ 3,150.00	\$ 12,600.00	\$ 15,750.00
21	Construction (Improvements)	Contractor	Materials - 6" N-12 HOPE Perf Pipe	\$ 35.00	LF	350.0	\$ 2,450.00	\$ 9,800.00	\$ 12,250.00
22	Construction (Improvements)	Contractor	Viewing well & clean outs & yard inlets	\$ 500.00	EA	10.0	\$ 1,000.00	\$ 4,000.00	\$ 5,000.00
23	Construction (Improvements)	Contractor	Permeable Concrete Pavers	\$ -	SF	12.5	\$ -	\$ -	\$ -
24	Construction (Improvements)	Contractor	Rain Garden & Topsoil	\$ 9,000.00	LS	1.0	\$ 1,800.00	\$ 7,200.00	\$ 9,000.00
25	Construction (Improvements)	Contractor	Landscape, Vegatative Restoration & Ed. Signage	\$ 12,000.00	LS	1.0	\$ 2,400.00	\$ 9,600.00	\$ 12,000.00
26	<b>Other (Miscellaneous) Costs</b>								
27	Other (Miscellaneous) Costs	Project Manager	Mobilization & Demobilization (7.5%)	\$ 18,035.00	LS	1.0	\$ 3,607.00	\$ 14,428.00	\$ 18,035.00
28	Other (Miscellaneous) Costs	Project Manager	Contingency (25%)	\$ 65,621.00	LS	1.0	\$ 13,124.20	\$ 52,496.80	\$ 65,621.00
29	<b>TOTAL PROJECT BUDGET:</b>						<b>\$ 79,141.20</b>	<b>\$ 316,564.80</b>	<b>\$ 395,706.00</b>
30							<b>ORGANIZATION SHARE</b>	<b>GRANT SHARE</b>	
31	<b>*COST SHARE % =</b>						<b>20.00%</b>	<b>OK</b>	
32							<b>20%</b>	<b>80%</b>	

**FIGURE 1 – MAP OF PROJECT AREA**





**ATTACHMENT B  
TO FY 2023 CLASS B INFRASTRUCTURE GRANT AWARD AGREEMENTS**

DO NOT WRITE ABOVE THIS LINE

**Agreement to Maintain Stormwater Control Facilities  
Funded by an LFUCG Class B Infrastructure Stormwater Quality Projects Incentive Grant**

The upkeep and maintenance of stormwater control facilities is essential to the protection of aquatic resources. All property owners receiving grant funds from the Lexington-Fayette Urban County Government through the Stormwater Quality Projects Incentive Grant Program for construction of any stormwater control facility are expected to conduct business in a manner that promotes resource protection. For purposes of this document, a "stormwater control facility" is an equivalent term for "stormwater control device" or "stormwater management system or facility," and is any detention basin, detention pond, drainage way, extended detention basin, retention basin, catch basin, outlet, or any other structure or equipment or feature thereof, in whole or in part, designed to control stormwater quantity or improve stormwater quality. This Agreement contains specific provisions with respect to maintenance of the stormwater control facilities described below.

**PROPERTY SITE ADDRESS:** \_\_\_\_\_

**PROPERTY OWNER NAME:** \_\_\_\_\_

**PROPERTY LEGAL DESCRIPTION:**  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**STORMWATER CONTROL FACILITIES DESCRIPTION:**

Funded by Stormwater Quality Projects Incentive Grant: Fiscal Year \_\_\_\_\_, Class BI

1. <Facility Description, Facility Grant Value<sup>1</sup>, Placement in Service Month<sup>2</sup>, \_\_\_-year depreciation schedule<sup>3</sup>>
2. <Facility Description, Facility Grant Value<sup>1</sup>, Placement in Service Month<sup>2</sup>, \_\_\_-year depreciation schedule<sup>3</sup>>
3. <Facility Description, Facility Grant Value<sup>1</sup>, Placement in Service Month<sup>2</sup>, \_\_\_-year depreciation schedule<sup>3</sup>>
4. <Facility Description, Facility Grant Value<sup>1</sup>, Placement in Service Month<sup>2</sup>, \_\_\_-year depreciation schedule<sup>3</sup>>
5. <Facility Description, Facility Grant Value<sup>1</sup>, Placement in Service Month<sup>2</sup>, \_\_\_-year depreciation schedule<sup>3</sup>>

<sup>1</sup> Facility Grant Value is the amount of LFUCG incentive grant funds expended on feasibility, design and construction costs for each given facility.

<sup>2</sup> Placement in Service Month is the month the facility goes into service.

<sup>3</sup> Use 20-year depreciation schedule for green/vegetated roofs. Use 15-year depreciation schedule for all other BMPs.

Whereas, <property owner name>, has proposed to construct stormwater control facilities on the property described above and whereas the goals of the Lexington-Fayette Urban County Government are to ensure the protection and enhancement of Fayette County's aquatic resources, the **Lexington-Fayette Urban County Government (LFUCG)** and <property owner name> hereby enter into this Agreement. The responsibilities of each party to this Agreement are identified below.

THE <property owner name> HEREBY:

1. Agrees to implement the stormwater control facility Inspection, Operations, and Maintenance Plan developed for each facility and incorporated by reference herein.
2. Agrees to maintain the stormwater control facilities in good working condition, acceptable to the LFUCG, so that they are performing their design functions.
3. Grants permission to the LFUCG, its authorized agents and employees, to enter upon the property with reasonable advance notice of at least 24 hours and proper identification, except in such circumstances where advance notice is inappropriate for the purpose of entry, and to inspect the stormwater control facilities whenever the LFUCG deems necessary. The purpose of the inspection is to assure safe and proper functioning of the facilities. The inspection shall cover the entire facilities, berms, outlet structures, pond areas, access roads, etc. When deficiencies are noted, the LFUCG shall give <property owner name>, its successors and assigns, copies of the inspection report with findings and evaluations.
4. Agrees that in the event <property owner name>, its successors and assigns, fails to maintain the stormwater control facilities in good working condition acceptable to the LFUCG, the LFUCG may enter upon the property and take whatever steps it deems necessary to maintain said stormwater control facilities and to charge the costs of the repairs to <property owner name>, its successors and assigns. This provision shall not be construed to allow the LFUCG to erect any structure of a permanent nature on the land of <property owner name>, outside of an easement belonging to the LFUCG. It is expressly understood and agreed that the LFUCG is under no obligation to maintain or repair said facilities, and in no event shall this Agreement be construed to impose any obligation on the LFUCG.
5. Agrees that in the event the LFUCG, pursuant to this Agreement, performs work of any nature, or expends any funds in performance of said work for labor, use of equipment, supplies, materials, and the like on account of <property owner name> or its successors and assigns, <property owner name> shall reimburse the LFUCG upon demand, within 30 days of receipt thereof for all costs incurred by the LFUCG hereunder. If not paid within such 30 day period, the LFUCG shall have a lien against the property in the amount of such costs, plus interest at the Judgment Rate, and may enforce same in the same manner as a lien for real property taxes may be enforced.
6. Agrees to indemnify and hold harmless the LFUCG and its agents and employees for any and all damages, accidents, casualties, occurrences or claims which might arise or be asserted against the LFUCG related to the construction or maintenance of the stormwater facilities by <property owner name> or its agents.

In the event a claim is asserted against the LFUCG, its agents or employees for such matters, the LFUCG shall promptly notify <property owner name>, their successors and assigns, and they shall defend, at their own expense, any suit based on such claim. If any judgment or claims against the LFUCG, its agents or employees shall be allowed, <property owner name>, its successors, and assigns shall pay all costs and expenses in connection herewith.



7. Grants permission to the LFUCG, its authorized agents and employees, to enter upon the property with reasonable advance notice to <property owner name> and proper identification, and, at LFUCG expense, to install, operate, and maintain equipment to monitor the flow rate and pollutant content of the input flow, the effluent, and at intermediate points in the facility, all in such a manner that does not unreasonably interfere with the use of the property by <property owner name>. <property owner name> further agrees to design and construct the facility to provide reasonable access for such monitoring.

8. Agrees to maintain a record (in the form of a logbook) of steps taken to implement the programs referenced in (1) and (2) above. The logbook shall be available for inspection by the LFUCG staff at <property owner address or business office> during normal business hours. The logbook shall catalog the action taken, who took it, when the action was done, how it was done, and any problems encountered or follow-up actions recommended.

On property where a stormwater control device is located fully or partially underground, <property owner name> further understands that an annual inspection of the underground facility is required by LFUCG Code of Ordinances 16-88(c), and an annual inspection report, prepared by a Professional Engineer licensed to practice in Kentucky, must be submitted to the LFUCG compliance representative listed in this document. This report shall address the condition of the device for meeting its intended purpose, and shall be included with the annual report described in Section (9) below.

9. Agrees to provide an **annual report** to the LFUCG regarding implementation of the programs referenced in (1) and (2) above upon request from the Grant Administrator or MS4 Permit Coordinator. The report shall contain, at a minimum, the following items:

- A. Name, address, and telephone number of the business, the person, or the firm responsible for plan implementation, and the person completing the report.
- B. Time period covered by the report.
- C. Copy of all inspection reports performed as part of the operations and maintenance program referenced in (1) above, including if applicable, the annual inspection for underground devices described in (8) above.
- D. A chronological summary of activities conducted to implement the program referenced in (1) and (2) above. A photocopy of the applicable sections of the logbook, with any additional explanation needed, shall normally suffice. For any activities conducted by paid parties not affiliated with <property owner name>, include a copy of the invoice for services.
- E. An outline of planned activities for the next year.

10. Agrees that in the event the <property owner name>, its successors and assigns, removes or takes out of service one or more of the stormwater control facilities funded in whole or in part by the LFUCG grant, <property owner name>, its successors and assigns, shall reimburse the LFUCG within 90 days of removal of the facility from service, 100% of the Remaining Value of the facility removed based upon the following depreciation schedule:

In:	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10	Year 11	Year 12	Year 13	Year 14	Year 15	Year 16	Year 17	Year 18	Year 19	Year 20
15-year Depreciation	3.33%	6.67%	6.67%	6.67%	6.67%	6.67%	6.67%	6.66%	6.67%	6.66%	6.67%	6.66%	6.67%	6.66%	3.33%	-	-	-	-	-
15-year Remaining Value	96.67%	90.00%	83.33%	76.66%	69.99%	63.32%	56.65%	49.99%	43.32%	36.66%	29.99%	23.33%	16.66%	10.00%	3.33%	-	-	-	-	-
20-year Depreciation	2.5%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	5.0%	2.5%
20-year Remaining Value	97.5%	92.5%	87.5%	82.5%	77.5%	72.5%	67.5%	62.5%	57.5%	52.5%	47.5%	42.5%	37.5%	32.5%	27.5%	22.5%	17.5%	12.5%	7.5%	2.5%

The % of depreciation shall be applied to the Facility Grant Value for the year the facility was removed from service, with month 1 of Year 1 being the Placement in Service Month listed at the beginning of this document. If not paid within such 90 day period, the LFUCG shall have a lien against the property in the amount of the remaining value of the facility removed, and may enforce same in the same manner as a lien for real property taxes may be enforced.

SAMPLE

<PROPERTY OWNER>

<BUSINESS ADDRESS>

BY: \_\_\_\_\_

NAME: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE: \_\_\_\_\_

The foregoing Agreement was subscribed, sworn to and acknowledged before me by \_\_\_\_\_, as the duly authorized representative for and on behalf of \_\_\_\_\_, on this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

\_\_\_\_\_  
**Linda Gorton, Mayor**

The foregoing Agreement was subscribed, sworn to and acknowledged before me by \_\_\_\_\_, as the duly authorized representative for and on behalf of \_\_\_\_\_, on this the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

My commission expires: \_\_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC

**Maintenance Agreement Contact Information for Compliance**

**Owner Representative Name:** \_\_\_\_\_

**Business Address:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Representative's Phone Number:** \_\_\_\_\_

**Representative's E-Mail:** \_\_\_\_\_

**Urban County Government Information for compliance issues:**

Contact: \_\_\_\_\_ LFUCG's MS4 Permit Coordinator

Address: \_\_\_\_\_ LFUCG Division of Water Quality  
\_\_\_\_\_ 125 Lisle Industrial Avenue, Suite 180  
\_\_\_\_\_ Lexington, KY 40511  
\_\_\_\_\_

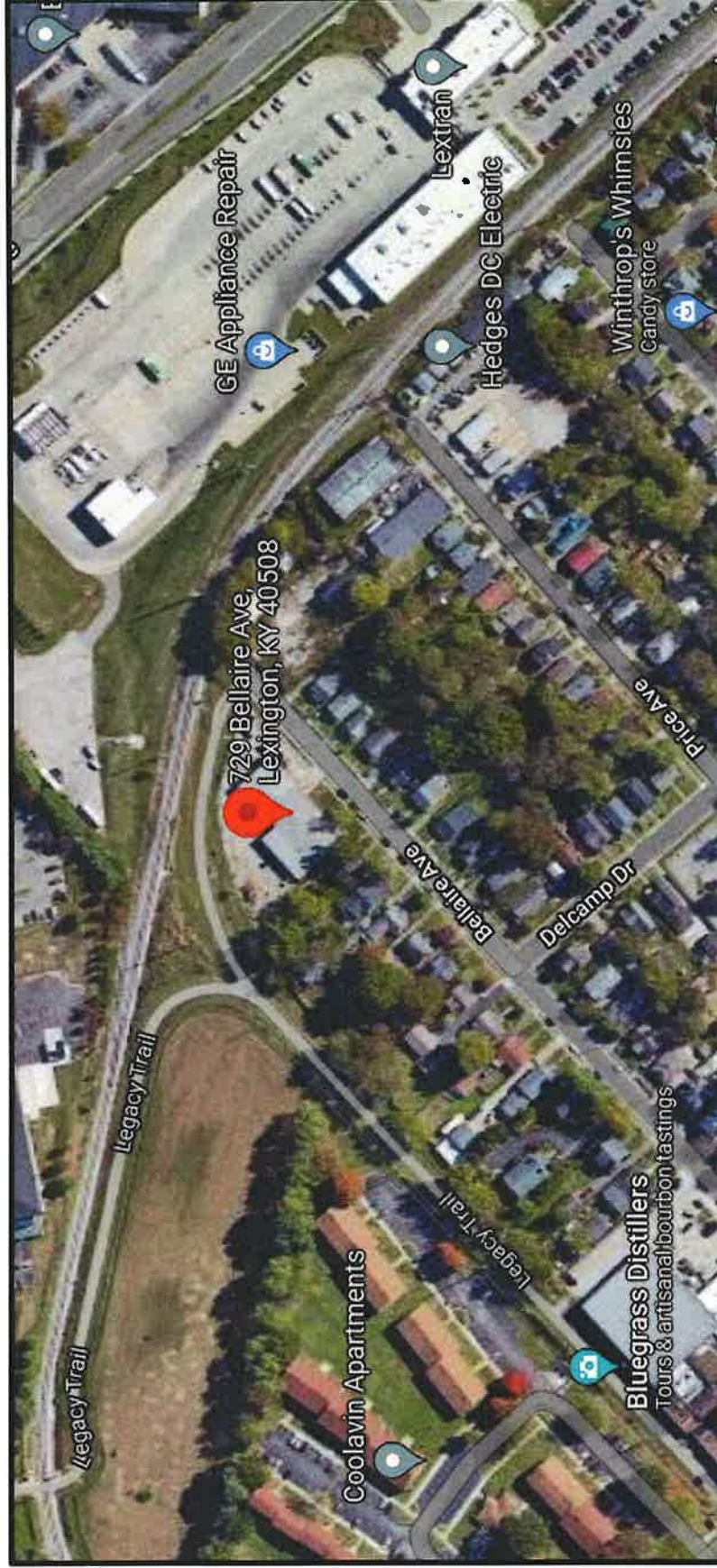
Phone: \_\_\_\_\_ (859) 425-2400

Email: \_\_\_\_\_ MS4@lexingtonky.gov

Prepared by:

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Lexington, KY 40507  
(859) 258-3500

Stormwater Quality Projects Incentive Grant Program



United Landscape Services, Inc.